THIRTY-NINE ARTICLES

ON THE

REPORT OF THE BENGAL RENT-LAW COMMISSION.

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STATEMENT.

At the request of the numerous readers of the *Hindoo Patriot*, both official and non-official, European and Native, I am induced to reprint in this form the series of articles which appeared in that journal on the Report of the Bengal Rent-law Commission. I have had no time to add to, alter, enlarge or revise, the original articles. The question of land-law reform is still before Government, and I shall consider myself amply repaid if these articles contribute, however slightly, to a proper understanding of that vitally important question.

KRISTODAS PAL.

Calcutta,
The 20th August 1881.

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THIRTY-NINE ARTICLES

ON THE

REPORT OF THE BENGAL RENT-LAW COMMISSION.

I.

SINCE the Indigo Revolution of 1860 a greater work had not been undertaken by the Government of Bengal than the consolidation and amendment of the Rent-Law, which regulates the relations between the proprietors of land, the long link of subordinate holders of land, and the vast mass of the peasantry, who till the land. The whole population of Bengal may be said to be directly or indirectly interested in land, and the solution of the land problem, therefore, involves the life-problem of the people of these provinces. There has been much ignorant, superfluous, capricious, and high-handed legislation on the subject, prompted doubtless by good and benevolent motives, but practically attended with evil consequences. Social harmony, progress and happiness cannot be wholly moulded by hard hits of the legislative anvil; there are many circumstances and influences, which are beyond the ken and control of the legislature, moving the currents of social life, swaying the relations between property, capital, intelligence and labour, and contributing to that *summum bonum*, which is called in the aggregate human happiness. If the Tree of Knowledge brought evil into the world, the same is true of the pretended knowledge which our later legislators thought they had acquired of the tangled web of the landed system of Bengal. The more they have meddled, the more they have muddled, and we fear the same will be the result of the labours of the Rent-Law Commission, unless the Government takes good care to moderate the effervescence of their enthusiasm. We have not yet had time to carefully study and digest the whole report, but from the cursory perusal we have been able to give to it, we do not hesitate to say that it does great credit to the industry of the members of the Commission. They have got through an Herculean task, and if we cannot endorse all that they have written or recommended, we cannot withhold from them the meed of praise, to which they are certainly entitled for the labour they have undergone, the vast mass of information they have collected, and their earnest endeavour to solve many knotty points connected with the landlord and tenant law. Some of the suggestions they have made, if carried out, will be decided improvements upon the existing law, but in not a few instances have they been carried away by enthusiasm, we will not say, bias, one way or another, and enthusiam is a dangerous element in legislation. Some of the members of the

Commission have evidently been actuated by a desire to reconstruct the frame-work of our agricultural society on certain pet theories of their own, partly derived from mere book-knowledge, partly evolved from their inner consciousness, and partly from their ostentatious espousal of the cause of humanity, when the practice of the virtue will not cost them one pice, or affect in the least their kith and kin. Unfortunately Indian legislation primarily rests in hands, which change after a certain appointed term of years, and which are not touched in any way after the work is done, and which undertake the task because they are paid for it, and which are likely to be dismissed if they do not shew a sufficient amount of work.

In the absence of the proceedings of the Commission we cannot take a full and comprehensive view of their labours, but their report we must confess is elaborate enough. It is signed by Mr. H. L. Dampier, President, Dr. C. D. Field, Mr. A. Mackenzie, Mr. J. O'Kinealy, and Babus Mohinimohun Roy, Peary Mohun Mookerjea and Brojendrakumar Seal. Mr. H. L. Harrison is the only member of the Commission, who has not signed the report, as he left for Europe before the report was ready or agreed to. To the report are appended four minutes recorded by Mr. Dampier, Mr. Mackenzie and Babus Mohinimohun Roy and Peary-Mohun Roy. The report has been evidently written by Dr. Field, on whom fell the brunt of the work. He assisted the Commission at the preliminary stage by preparing a lucid and admirable digest of the Rent-laws, and with regard to the report Mr. Mackenzie justly says: "Much credit is due to Mr. Field for the manner in which, under considerable difficulties, owing to the absence latterly from Calcutta of several members of the Commission, he has succeeded in fairly embodying in the report the views of most of us, and in expressing in his draft sections the general conclusions arrived at while we were together." The minutes referred to are dissents, in which the writers have expressed themselves freely enough. Mr. Dampier disagrees from his colleagues on some essential points, which we will notice hereafter. Babu Pearymohun Mookerjea has touched upon many important points, and the bold-stand which he has taken in respect of them derives its strength from the position, which he represents in the following words:

The Bill has been avowedly framed on the principle that "the land of a country belongs to the people of the country; and, while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the majority of the community." This is a theory, however, which assails the very foundation of private property. Whether they are the outcome of prescriptive enjoyment, or the result of acquisition by labour or money, rights of property should be scrupulously respected, and if the Ruler thinks it desirable that a vested right should be destroyed, let it be compensated for at its money value, or some other equivalent paid to its possessor. It is as reasonable to trench upon a vested right of a landholder for the good of the ryots, as to ask a ryot to carefully cultivate land for the benefit of the entire Indian community.

Babu Mohinimohun Roy thus opens his minute:

I do not approve of the Draft Bill as a whole, and strongly disapprove of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes. The relation of landlord and tenant, with reference to rights in land, is such that you cannot confer a valuable right upon one class without causing a corresponding diminution in the interest of the other. I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B.C.) of 1869; but that we might do a great deal for their common benefit and diminish litigation by simplifying the procedure, by simplifying the relations of the two classes and by removing the technical difficulties and formal obstacles which now exist in the way of the exercise of their just and undoubted rights. The majority of the Official Members, likewise formed the majority of the Rent Commission, however, held views somewhat different, and seemed to think that the line drawn by the existing law (Act X of 1859 and Act VIII (B.C.) of 1869) between the conflicting rights of landlord and tenant was not sufficiently "scientific," and that they (the majority of the Rent Commission) might, and should now, recast land tenure and make a redistribution of the property in land between the classes.

Mr. Mackenzie thus retorts:

The only member who has thought fit to cavil at the *style* of the work is apparently Baboo Mohinimohun Roy, who to our great loss, only found leisure to attend less than half of the forty-four meetings of the Commission, was seldom able when he did come to remain till the close of any meeting, was absent when many of the more important matters were discussed, and gave less aid in shaping the measure which he now criticises than any other member. Personally I regret this, because what few suggestions this gentleman favoured us with were practical and marked by much acuteness, and if he had been actively suggestive, instead of unduly reticent, we might have derived much benefit from his assistance.

Again:

There can be no doubt that in its main features the bill expresses the common conclusion of all the members, with the marked exception of the two gentlemen who represented specially the Zamindari interest—Baboo Peary Mohun Mookerjee and Baboo Mohinimohun Roy. I am afraid that the only measure likely to command their unqualified approval would be a bill giving unlimited facilities of collection and enhancement of rent to the Zemindars, and curtailing, as far as possible, the few legally recognized privileges of under-tenants and ryots. Baboo Peary Mohun Mookerjee especially has been consistently opposed to making any concessions to either tenure-holders or cultivators, and has even repudiated the more liberal views of the British Indian Association, as officially expressed, on such matters as the maximum rate of occupancy rents and the transferability of the occupancy tenure. Both these gentlemen, in their minutes of dissent, protest vigorously against "going behind Act X of 1859" when any benefit to tenants is likely to arise therefrom, but they both seem quite ready to set Act X aside when consequent gain would accrue to the class which they represent. I place in contrast, as some evidence of this, the following passages:—

Extract from remarks on the Bill by Mohinimohun Roy.

"I do not approve of the Draft Bill as a whole and, strongly disapprove

Extract from proceedings of the Eighteenth meeting of the Commission.

"Baboo Mohinimohun Roy proposed to alter the presumption, that

of the many material changes which it proposes to make in the substantive law relating to rights in land. I always deprecated such changes. I was therefore of opinion that we ought not to make any substantial alterations in the respective rights of landlords and tenants as defined by Act X of 1859 and Act VIII (B.C.) of 1869. It seems to me we ought not to go behind Act X."

when a ryot's rent has not been changed for 20 years the land has been held at that rent from the time of Permanent Settlement.

Ayes.	Nos.
Baboo Mohini Mohun Roy, Baboo Peary Mohun Mukerjee.	All the other six Members of the Commission.

Now, though I think it right to notice the spirit in which these dissentient members approach the subject, I do not for a moment maintain that this fact invalidates their criticisms or disparages their arguments. They support, as they have every right to do, one side of a very vexed question. It is natural enough that they should as landholders themselves, enunciate the highest theories of the character and extent of Zemindari rights in Bengal. They make of course, and quite legitimately, the very most of the terms "proprietors of the soil" and "landowners," used in the legislation of 1793. They hold on tenaciously, and rightly, to the sheet-anchor of their school—Sir Barnes Peacock; and they are, fortunately for them able also to refer to the present Chief Justice as having (though, so far, on the unargued case,) accepted the views of the Zemindary propaganda. There is evidently much to be said, therefore for their views of the facts, and it is not at all likely to be left unsaid. The landed and wealthy classes of Bengal have powerful organs in the Press, and powerful friends both here and at home. They are many of them very amiable persons, of great intelligence and great benevolence. Officials are glad to do them favors, and find it pleasant to be on friendly relations with them. Every prejudice arising out of Western notions of property and the relations of landlord and tenant in Great Britain is entirely on their side. It is only at the cost of much dry study of old records, old laws and old books and from a close and critical examination of certain apparently anomalous survivals in the rural economy of the province that one comes to learn that there is even in permanently settled Bengal, quite another side to the land question which is not represented in the zemindars' statement of the case; which has been affected less than is supported by modern legislation; which concerns the interests of vast masses of unfriended peasants; and which the occurrences of recent years make it necessary once for all to bring prominently under the consideration of Government and the legislator.

I cannot here enter into a detailed statement of the grounds upon which I, for one, have been led to hold that there is, both in law and fact, a living tenant-right in Bengal, a right that is to say, belonging to the cultivator, limiting and restricting the proprietary rights of the Zemindar, and which though seriously damaged by ill-advised legislation, has not yet been altogether destroyed. Some of these grounds will be found on record in the proceedings of the Commission, and especially in Mr. O'Kinealy's historical note. The Commission has by a majority practically endorsed that general view, though it has not seen its way to placing the matter on the simple basis suggested by me. I wish, therefore, very briefly to repeat what my contention is and to show that it is not after all more than the Zemindars themselves would be wise to grant.

I may remark at the outset that I have myself no special reverence for Act X of 1859. I have read all the correspondence leading up to it, and all the

discussions attending its enactment, and I suppose that there never was a measure of equal moment so inadequately considered and debated.

The fact is that it was devised mainly to meet acknowledged evils arising out of the summary procedure then in force for the recovery of rents, and attaching to the system of distraint; and what provisions of substantive law were incorporated in it were brought in almost haphazard, without any reference to the mass of information bearing upon them, which lay in the record rooms of Government, and the numerous discussions and proposals of former years, which had been allowed to slide into oblivion. I have the original file before me as I write and it is marvellous to see how little was known of byegone discussions as to ryots rights, bygone orders of the Court of Directors to perfect these, and bygone representations of Collectors as to the unauthorized encroachments of the zemindars.

It will be seen from the above in what spirit the different members of the Commission have approached the very important task assigned to them. Their ideas being fundamentally different, they could not be expected to stand on a common ground, the more pronounced among them have taken to different lines, but the report of the Commission represents on many important points their joint opinion. Thus it is explained in a foot-note to the report: "The plural of the pronoun of the first person —"we"—is used through this report to express the unanimous opinion of the members of the Commission, or where the questions are unimportant, the opinion of the majority. Where the questions are important and the members are unanimous, the opinion adopted is expressly stated to be that of the majority. Some members have appended to the report an expression of their views on particular points." The Commission was, we believe, appointed in March last year; its constitution was originally entirely official; at a later stage two non-official members were added in the persons of Babus Mohinimohun Roy and Peary Mohun Mookerjea. It held forty-four sittings. It has taken nearly fifteen months to discuss the subject and to prepare the bill and report. We propose to notice in detail hereafter the different propositions and suggestions of the Commission.

II.

THE new Rent Bill drafted by the Rent-Commission contains many innovations, which if enacted into law will completely revolutionize the relations between the landlord and tenant in Bengal. We will follow the example of the Commission, and consider the Bill according to its arrangement in discussing the alterations and amendments, which they recommend. We will take the definitions first. Now, what is a "ryot"? He is thus described in the interpretation clause of the Bill: "Subject to the provisions of Section 11, "ryot" means a person who holds land, or who occupies and cultivates land, if such person or his predecessor in title was originally let into possession of such land for the purpose of cultivating it, or bringing it under cultivation. A person cultivates land, or brings land under cultivation within the meaning

of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sublet the land or any part of it, or partly by some and partly by others of these persons." This definition considerably extends the scope of the meaning hitherto attached to the word "Ryot." The ryot, from the days of Manu we might say, was understood to mean an actual cultivator of the soil. This signification of the word was retained in Act X of 1859. In that Act the word Ryot is defined to mean "the person in possession or occupation of land or originally let into the possession or occupation of land for the immediate purpose of cultivation." But the Rent Commission propose to convert the ryot into a sub-proprietor. Cultivation might be carried on by the ryot himself, or by the members of his family, or by servants, or by hired labourers. But however this might be done in times past he had an immediate and direct interest in the produce of the land. The gain or loss from cultivation would be his. But under the proposed definition a ryot without any outlay of capital, without a vestige of proprietary right legitimately acquired, without any pretext of justice, might become a rent-receiver or sub-proprietor. If he owns more than 100 bigas of land he would be recognized as an "undertenureholder." The Commission admit that "the usual conception of a ryot is that he is the cultivator of the soil." But they remark, "if holdings had all been of such a size that they could be cultivated by a single average, family, and if the practice of sub-letting had never come into existence, the ryot would in all probability still be the cultivator of the soil in every case. But the practice of sub-letting has become very common. Even where the holding is of such a size that an average family can cultivate it, it is not uncommon for the holder to take to some other employment than agriculture and to sublet his paternal fields. Then there are in many districts, farms, as we may term them in the English sense of the word, lots of land, too large for cultivation by any ordinary family in a country where cultivation is not conducted by capitalists, largely, employing hired labourers and agricultural machinery. The size of these lots forbids the presumption that the original lessees contemplated cultivating them either with their own hands, or through the members of their families, or by hired labourers; and all that we know of their history tends to negative the existence of any intention." It is true that sub-letting in one form or another prevails in almost every district in Bengal. The Commission quote the following from a report of Mr. Glazier on the *Jotedary* system of Rungpore:

"The ryot who holds direct from the zemindar is called a Jotedar and his holding is a Jote, whatever its size, which may and does vary from one paying a rent of one rupee to one of which the rent is half a lakh. The large majority of Jotedars have small holdings and are ryots proper, cultivating their lands either by their own or hired labour, or on the system of adhiyari or halvers. But a large number of Jotedars have ryots under them who are called either chukanidars or kurpa projas. The chukanidars, too, have often ryots under them, and in some cases, especially in the large jotes, these four or more degrees before you get to the actual cultivator. Jotes are saleable quite irrespective of the term during which they have been held, whether Jotes held direct from the

zemindar, or chukani Jotes, which are held from a Jotedar. If a man gets a Jote to-day, he can legally transfer it by sale to-morrow. Such sales of Jotes by registered deeds or on decree of Court are of daily occurrence."

In Backergunge, as the Commission remark, there are as many as thirteen persons having successive interest in the land inferior to that of the proprietor or zemindar. These interests are (1) taluk, (2) zimba taluk, (3) shamilat taluk, (4) ashat taluk, (5) nim ashat taluk, (6) howla, (7) ashat howla, (8) nim ashat howla, (9) nim howla, (10) ashat nim howla, (11) mirass karsha, (12) kaim karsha, (13) karshadar or ryot. Persons in an apparently similar position are to be found in other districts, under various appellations, such as Jangalbari ryots, mandals, aymadars. The Commission are of opinion that the origin of the sub-letting leases was the reclamation of waste lands included in permanently settled estates. They do not naturally enough comment on the ruinous assessment of the land under the Permanent Settlement, ten-elevenths for the state and one-elevenths for the zemindar. But they are quite right in stating that the waste lands were given to the zemindar by way of compensation. And these waste lands were brought into cultivation by various devices. The Commission remark, "the waste land being thus as it were held free of revenue by the zemindars—seeing that the amount of revenue payable by them depended upon the cultivated lands and would be in no way affected by the waste being cultivated or not cultivated—they naturally did not take much account of Government revenue in granting reclaiming leases. All the rent that they obtained by such grants was clear gain, subject to no deductions. Naturally they could afford to give, and they did give, such leases at very favourable rates—rates which left a large and increasing profit to their immediate lessees." This is a rather tortuous way of putting the thing. Written leases were unknown in the days of the Permanent Settlement. It was the interest of the zemindar to bring the waste lands into cultivation in order to recoup the loss which was inflicted upon him by the Settlement. He had to contend with no small difficulties in extending cultivation. He had to advance money, to establish the village machinery at his own cost for the service of the village, that is to say, the village vendor, barber, washerman, priest and other members of the village guild, and not unfrequently to maintain the ryots, who first turned the plough. It might be that as cultivation extended, the original grantees augmented the area of cultivation, and employed *kurfa* ryots to work for them. The zemindar did not interfere with them, simply because the law did not interfere with him. He could make the settlement with the ryot according to their mutual convenience and advantage. But the case is different now. The sub-letting system, though it is the means of the maintenance of our large middle class, presses very hard upon the actual cultivators of the soil, whose labour constitutes the wealth of the agricultural community. But the question is whether the ryot should be treated as a ryot or as a rent-receiver. The Commission admit that the latter position is not recognized by law. They say: "Turning to the case-law we find it decided (1) that, if a person takes land and at once sublets it, he will be

a middleman and will not under the present law acquire a right of occupancy in such land; (2) that if a ryot, who has acquired a right of occupancy in land, sublets such land, he does not by so doing forfeit his right of occupancy; but (3) he cannot by so doing alter the nature of his holding and convert it into an undertenure. Applying these principles, it will appear that the reclaiming lease-holder, who never himself cultivated and who sublet before he had held for twelve years, never was a ryot with a right of occupancy." But what proof is there that the reclaiming lease-holder was never a cultivator himself? This is an assertion which cannot be established by legal or historical evidence. Out of ten ryots who reclaimed waste lands, there were perhaps nine, who did cultivate with their own hands, though they might have employed other hands to assist them. But because the reclaiming leases were favourable, that is no reason that the same advantageous terms should continue for ever. Has not the Government itself changed its own terms for the reclamation of waste lands? The Commission proceeding upon an arbitrary assumption recommend a most arbitrary law. We give their recommendations below:

(After the fullest consideration of the whole subject, it appears to us impossible to discover any principle of distinction between ryots and tenureholders or undertenureholders, which will hold good universally or even in the majority of cases. If cultivation be taken as the test whether the interest of a particular tenant is a tenure (or undertenure) or a ryote holding, a talukdar, tenureholder or undertenureholder may cultivate land forming part of his taluk, tenure or undertenure, while the person commonly called a ryot may have sublet his entire holding and may not himself cultivate a single square foot. It is impossible therefore to say that under all circumstances, the person who cultivates is a ryot, and the person who does not cultivate is a tenureholder. If the receipt of rents from persons in the actual occupation of the land be considered the essence of a tenureholder or undertenureholder, then we find ryots also subletting and receiving rents from their tenants in actual occupation. If hereditability be tried, the ryot's interest, the ryot's holding is heritable as well as the taluk. Is transferability the test? The ryots' Jumma, independently of Acts X of 1859 and VIII of 1869 is commonly transferable by custom. Is saleability for its own arrears set up, as the true distinction? The landlord of his own option brings ryot's holdings to sale in execution of decrees for rent, while a tenure or undertenure is not subject to the special law for the sale of undertenures for the recovery of arrears of rent due in respect thereof, unless it is so saleable by the title deeds or established usage of the country. If the quantity of rent paid by the tenant be supposed to be the point of distinction, then in Rungpore the rent of a Jote varies from one rupee to half a lakh of rupees; while in other districts the rent of many taluks is but a few rupees. It is true that a tenureholder or undertenureholder is not liable to enhancement upon the grounds applicable to a ryot having a right of occupancy; but this distinction stops here, for the existing law does not define the grounds upon which the rent of a tenure or undertenure can be enhanced.

Under these circumstances we have come to the conclusion that the quantity of land included in a single demise will afford the most reasonable ground of distinction in the case of the class of tenants under discussion. Although at the present time and under the altered condition of agricultural society actual cultivation is no longer the essence of a ryote tenure, we think that the original

conception of a "ryot" was that he entered on the land for the purpose of cultivating it or bringing it under cultivation either by his own personal labour or by that of his servants or followers, or by means of persons who would occupy portion of the land, giving him in return a share of the produce according to the custom of the country, and afterwards a money rent when it suited both parties to make this arrangement. A ryoti holding being created in this manner, it did not cease to be such because the ryot subsequently sublet (there being nothing either in his contract or in the custom of the country to prevent him from doing so), and practically converted himself into a middleman, which is only another name for a tenure-holder or undertenure-holder. This process of convertion is going on and has long been going on in every district of Bengal. That while undergoing this process there should be some doubt as to how far the tenant was to be governed by the incidents of the ryoti condition which he is leaving, or by those of the tenure condition to which he is approaching is only natural. It is not possible so to adapt legislation as to make exact provision for this transition state: but looking at what we take to be the true conception of a ryot, and finding it impossible to ignore the custom of subletting, we think it reasonable to say that, whether a tenant subsequently sublets the whole or part of the land demised to him, it is not easy to presume that he had any intention of assuming the position and status of a ryot, if the quantity of land included in the original demise was so large that it could not be cultivated by a single tenant with such means and assistance as are usual in the country. We have therefore enacted (section 11. that, notwithstanding any custom or contract to the contrary, every person to whom more than one hundred standard bighas of land have been let by a single demise, otherwise than for a term or year by year, shall be deemed to be a tenure-holder or under-tenure-holder within the meaning of sections 8,9 and 10. If the lessor were a proprietor, the lessee will be a tenure-holder; if the lessor were a tenure-holder or under-tenure-holder, the lessee will be an undertenure-holder of the first, second degree and so on. We have made possession necessary to complete the demise in order to avoid the risk of litigation, which in this country, is so common when persons out of possession but relying on titles that have to be established in courts of law before they can be enforced, grant leases to persons who are prepared to speculate in law-suits. We have made these provisions applicable to tenancies created as well before as after the commencement of the Act. We have further declared that every such tenure or under-tenure, which has been held for twelve years shall be permanent and transferable. The quantity of land selected for the purposes of these provisions is of course an arbitrary quantity; but we think it reasonable to draw the line at one hundred bighas. Having regard to what has been said above, it may be well to observe that, although the person who holds more than one hundred bighas is made a tenure-holder (or under-tenure-holder), whether he or his landlord wishes it or not, the person who holds one hundred bighas or less may be a tenure-holder or a ryot, as he and his landlord wish and agree."

Not only would this new rule be wholly inconsistent with the existing law on the subject, not only would it be a direct invasion of the rights of the zemindar, but it would be seriously detrimental to the true interests of the actual cultivators. An undertenure-holder under the existing law is a sub-proprietor; he acquires his right by paying a good price or consideration for it, but here he would be a person, who would be raised to that position by the mere fiat of the law. Would this be just to the landlord or equitable in the abstract? Would again the arbitrary line of 100 bighas be fair to those ryots, who may hold a less

quantity of land, but who may not cultivate themselves? Then again the under-tenure as thus created will be heritable, devisable, capable of being transferred by sale, gift, or otherwise at the discretion of the holder. Further, there is a limitation put upon the enhancement of the rent of such under-tenure. Thus the new definition of the word Ryot, followed by the new rights and privileges, proposed to be conferred upon him, will raise him to the position of a sub-proprietor. This means a revolution, which will practically amount to a spoliation of the rights of the proprietary class, while it will not in the least benefit the actual cultivator of the soil, the sweat of whose brow extracts the produce of the land.

III.

In our last article we considered the definition of "Ryot." In the present we will discuss the definition of "land." Land is thus defined:

"Land" includes woods and water thereupon when applied to land cultitural vated or held by a ryot, it means land used or intended to be used for agricul- or horticultural purposes, or the like. In Chapter XVIII it means (a) tenures, under-tenures, and holdings; (b) land used or let to be used for agriculture, horticulture, pasture, or other similar purpose, or for dwelling house, manufactures, or other similar buildings; and (c) rights of pasturage, forest rights, fisheries, and the like:

Explanation.—*Bastu* or homestead land is land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding."

The Commission in the body of the report thus explain this new definition of "land": "Certain portions of Acts X. of 1859 and VIII. (B.C.) of 1869 have been construed to apply only to land used for agricultural or horticultural purposes or the like. Whether the remaining portions are limited in their application is a broad question, which has never been settled, while some have contended that the provisions of these Acts as to the recovery of arrears of rent apply to the rent of any land, irrespective of the purpose for which it is used. It has never been doubted that the rents of tenures and under-tenures are recoverable under Acts, and these commonly include much more than land used for agricultural or horticultural purposes. We have endeavoured by our definition to make this question clear for the future, and according to this definition the provisions of the Bill will be applicable to land used for all such purposes as are usual in this country. We have defined *bastu*, or homestead land, to be land used for agricultural purposes when it is occupied by a ryot, and together with the land cultivated by such ryot forms a single holding. With respect to *bastu* land occupied by non-agriculturists we have considered certain suggestions as to the hardship of persons, who have occupied such land for very many years, being liable to arbitrary ejectment and we have provided generally for land used for building purposes in Chapter VI., the provisions of which we shall notice in order." This definition of

"land," as any one, who is acquainted with the conditions on which land is held by ryots in Bengal, is aware, is opposed to law, custom, and the current of judicial decisions. Dr. Field in his digest of the Rent-law says, "every tenant is bound to use the land which he held as tenant in a reasonable manner for the purpose for which it was let or has been customarily used. A ryot may not without the consent of his landlord erect a permanent building, dig a tank or execute any other work, which materially alters the condition of the land held by him, and renders it permanently unfit for agricultural or horticultural purposes." In a footnote, Dr. Field remarks, "according to English law the mere relation of landlord and tenant creates an implied obligation on the part of the tenant to manage and use the land in a husbandman-like manner, according to the custom of the country. The importance of good agriculture has not yet been sufficiently understood in India to have raised questions of this nature." This is quite true. But the present legal incidents of the right of occupancy do not include the right to building a homestead upon agricultural land or digging a tank in it, or removing trees from it without the permission of the proprietor. These incidents would be, however, entirely changed by the new Rent Bill. We have seen above the definition of "land." It will include homestead land. On this point Babu Peary Mohun Mookerjea in his dissent pertinently remarks: "A ryot, who wants to build a dwelling-house, invariably goes to the zemindar or his agent and rents a plot of *bastu* land for the purpose. He has to pay no fee unless he wishes to erect a brick-built house. He never meets with any difficulty in building his house, but he is well aware that he cannot, without the permission of the zemindar, build on his arable land and thus change it into *bastu*, which in several places yields less rent than arable land, and not always greater, as has been assumed. Ryots always protect themselves by taking perpetual leases from their landlords, whenever they wish to build a substantial house or to lay out a garden. The last Administration Report shows that in 1878-79 so many as 119,015 of such leases were registered in these provinces. The provision in question is, therefore, altogether unnecessary, and it will be a source of great loss to the zemindar, specially by reason of the rule which lays down that the rent of *bastu* land shall not be more than 5 per centum per annum of the market value of such land. Even supposing for a moment, as has been supposed, that an occupancy holding is worth four years' rent, a ryot would have simply to build a house or an out-office on a plot of arable land in order to get the rent of that plot ultimately reduced to 1-5th of what he was paying. The value of an occupancy holding, however, in many places rarely exceeds one year's rent. In such places, therefore, the rent of occupancy holdings converted into *bastu* would be according to the proposed rule proportionately smaller. These remarks apply with necessary modifications to the provision which gives a ryot the power to excavate tanks without the permission of the zemindar." In the actual relations between the landlord and tenant a distinction has always been made between agricultural land and *bastu* or homestead land. The ryot experiences no difficulty whatever in obtaining land for the erection of homestead, but

the rent varies in different places. In some districts it is higher than the rent of agricultural lands, while in others it is lower. But the rent of homstead lands is fixed at 5 per cent. upon the market value of such lands. This is not a fair return for lands of this description in the Mofussil. It needs also be borne in mind that all occupancy ryots are not equally entitled to the same consideration. A zemindar may very fairly call upon a new comer, who by a mere user of twelve years has acquired the right of occupancy, to pay a higher rent for his homestead lands than what he would take from one, whose family has held such lands from generation to generation. But the new Bill reduces all ryots to the same dead level. The same objections apply to the right accorded to the ryot to dig a tank without the permission of the zemindar and also " to cut down and appropriate trees on his holding planted by himself or by any ryot from whom such holding derived by public or private sale, gift, device or inheritance." This provision is made in direct opposition to the decision of the High Court, which says that "a zemindar has a right to the trees grown on his land by the tenant, who, though he may enjoy the benefits of the growing timber, has no power to cut the trees down." The position of the proprietor, under the new definition of land is still more aggravated by the provisions of the compensation clause, which runs as follows :

" A ryot who for a continuous period of three or more but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than khamar nijjote, or *Sir* land on lease for a term or year by year, shall, if evicted from land on any of the grounds mentioned in Section 26 or if he relinquishes it under Clause (b) of Section 27, be entitled to receive compensation for any improvements which he may have made on such land at any time while he he held or occupied it as aforesaid.

Explanation.—The term " improvements" in this Section means works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and inculdes—

(a) the erection of a dwelling-house and offices suitable for the habitation of a cultivating ryot ;

(b) the making of tanks, wells and other works for the storage, supply or distribution of water for agricultural purposes ;

(c) works for the drainage of land, or for the protection of land, from floods or from erosion or other damage by water ;

(d) the reclaiming, clearing or enclosing of land for agricultural purposes,

(e) the renewal or reconstruction of any of the forgoing works, or alterations therein or additions thereto ;

(f) the planting of fruit trees.

The landlord, as the Bengali saying goes, will be actually drawn between the teeth of the saw for cutting conch shells. In the first place he would have no right to stop a ryot from building a homestead upon his agricultural land, from digging a tank in it, from planting fruit trees upon it, or from executing any works which he might consider necessary. but if he (the ryot) should render himself liable to eviction, that is to say for breaches enumerated in section 26, to wit, (a) for non-payment of rent, or (b) for a breach of some condition of his lease which expressly provides that eviction shall be the penalty of such leases, or (c) for

refusal to pay an increased rent demanded by his landlord, he must pay the evicted ryot compensation for the same. On the one hand the proprietor is deprived of rights, which he had hitherto enjoyed, which have been a source of gain to him, and which have been duly respected by the customs of the country and the courts of law, and on the other hand he is burdened with the liability to pay compensation to evicted ryots for the exercise of rights, which they never had before, not to say that if these are evicted it will be for their own laches or breaches. Is this, we ask, right or equitable? This is a clear case of robbing Peter to pay Paul, and something worse. For not only is the proprietor to be robbed for the benefit of the ryot, but he will be made to pay doubly when the same ryot for his own fault is ejected from his land. This is perfection of justice!

IV.

THERE is one more definition, which calls for notice. It is the definition of Rent. The Commission state: "The definition of "rent" presented some difficulty as opinions differ about what rent really is in India, we have endeavoured to express what we hope will be accepted as a reasonable view of the subject, and have defined *rent* to be "whatever is payable or deliverable by a tenure-holder, undertenure-holder or occupancy ryot to the proprietor, tenure-holder, or under-tenure-holder possessing the interest immediately superior in the land held by him, in recognition and satisfaction of such superior interest; or whatever is payable or deliverable as a return or compensation for the use or occupation of land or for any rights of pasturage, forest rights, fisheries, or the like." This definition it will be observed is very cleverly drawn up. It seems to include every thing, and still it does not cover every thing. It does not refer to contract, custom, or competition specifically, but it may be said to imply all, and yet in the arguments put forth in the report regarding the theory of rent it is vague and uncertain. In the first place the Commission scout the idea of competition. They say: "We entertain no doubt that the ryots of 1793 possessed substantial rights: but even if they had no rights whatever, we think that Government could not consistently with the proper discharge of its functions, leave the settlement of what we shall now call the rents payable by the ryots to the uncontrolled influence of competition. There is in these provinces no capitalist farmer between the landowner and the labourer; the produce of the land is divided between two-classes, the land-owners and the labourers, the latter sustaining the character of capitalist to the limited extent to which capital enters into the question at all." But what is it that constitutes the essence of competition? It is demand and supply. If the demand is greater than the supply then the article in demand naturally rises in value, but if the demand is less than the supply, the value is also less. It is quite true that at the time of the Permanent Settlement the principle of competition in the determination of rent was not recognized, simply

because there was no competition for land. In fact in those days it was the land which sought the people, and not the people who sought the land. But time progresses, and as population has increased, the productiveness of land has improved, the facilities of communications by roads, railways, rivers and canals have opened new outlets for the products of the soil, and the value of agricultural produce has consequently risen, there is a greater demand or competition for land. This competition is of course more or less active according to the circumstances of each district. This natural result of the progress of society the Commission would not, however, recognize. In the first place they assume "custom." Thus the limit of the rent of tenures and under-tenures they declare should be "the limit of customary rate payable by persons holding similar tenures or under-tenures in the vicinity.' But they know too well that the Pergunna nirik or the "customary rate' is a myth. In no two villages in a district it may be said the rate of rent is the same. There are so many circumstances upon which the determination of rent depends that no hard and fast rule regulating the Pergunnah rate obtains in practice. Rents in Bengal, say the Commission, can be settled only by (1) custom, or (2) by competition, or (3) by law. They then go on:

"Custom has not as yet settled rents in the Lieutenant-Governorship of Bengal, owing in part to the disturbing influence of our own legislation, especially the Revenue Sale Law; and their settlement cannot be left to the slow operation of a principle, which has hitherto failed, and of the future efficacy of which there is no present prospect. Then as to competition—while population is sparse and land is plenty; when the supply of cultivators is limited and the demand for them active—the ryots have the best of the position, and can secure favourable terms. As population increases tables are gradually turned, and where cultivation of the soil is the only means of subsistence, the ultimate effect of unrestricted competition must be that the landowners can dictate their own terms to the ryots, who must either accept them or starve. The whole agricultural population are thus reduced to a condition of misery and degradation which must seriously reflect upon the Government under which such a state of things has come to pass. The land of a country belongs to the people of the country: and, while vested rights should be treated with all possible tenderness, no mode of appropriation and cultivation should be permanently allowed by the Ruler, which involves the wretchedness of the great majority of the community, if the alteration or amendment of the law relating to land can by itself or in conjunction with other measures obviate or remedy the misfortune.

Whether then the question be examined in the light of the ancient constitutional law of the country, or with reference to the high duty and obligation devolving upon Government to promote the happiness and prosperity of the people, the conclusion is the same namely, that the ruling power ought to determine the rents payable in these provinces by the ryots to the zemindars. In this view the appropriate theory of Rent is, not that it is the surplus profit of capital applied to agriculture, or that it depends immediately upon, or is regulated by the profits of capital; but it is such a proportion of the produce of the soil, deliverable in kind, or payable in money, as the Government may from time to time determine shall be delivered or paid by the cultivators to the zemindars or those to whom the zemindars have transferred their rights. If it

be asked on what principle Government should determine this proportion—what share shall be considered fair and equitable—our answer is—such a share as shall leave enough to the cultivator of the soil to enable him to carry on the cultivation, to live in reasonable comfort, and to participate to a reasonable extent in the progress and improving prosperity of his native land."

Are the Commission correct in stating that the principle of competition is at the present day unknown in Bengal? We can mention hundreds, aye, thousands of instances in which the rent is fixed on the principle of competition. One group of ryots would pay one rate of rent, and another another. Of course this condition of things obtains in newly reclaimed lands, which require new settlers. As regards old lands and old tenants, the question is not a new settlement of rent but enhancement. And under Act X of 1859 as worked by the Courts the enhancement of rent has practically become impossible. The *reductio ad absurdum* grounds upon which enhancement is to be made are an insuperable bar to that process. But if the zemindar cannot obtain enhancement of rent, the ryot, who sublets his lands, invariably levies a competitive rate from his sub-ryot, otherwise known as the *kurfa* ryot. The latter cannot plead custom or heredity—he pays as much as he can afford to pay after leaving a fair margin for his labour. The question may, therefore, be fairly asked whether the real basis of rent from the actual cultivator being competition, the determination of the rent of the occupancy ryot or tenure or undertenure-holder, who does not hold on permanent fixed rent, should not be regulated on the same principle, making, however, some allowance for the superior status for this class of tenants. It is on this principle the rent payable by ryots above actual cultivators is regulated in Oudh and the Punjab. But the Commission as we have said above have summarily rejected the principle of competition. They say that it is the Government which should fix the rate of rent for land. But, they remark, "when we come to apply this principle to the solution of the question before us, the first reflection that occurs to us is, that there is not presented to us a *tabula rasa* on which we may inscribe a single rule or set of rules which shall be of uniform application. The progress of nearly a century has created relations of persons and conditions of things, to sweep away which for the purpose of establishing an ideal normal standard would involve an interference with vested rights and a disturbance of existing associations, which would irritate the feelings of those concerned, and render the remedy worse than the disease. Were we to set up any single average standard of comfort for the whole agricultural population of these provinces, we might find that, while it placed the Behar ryot in a position of ease calculated by the sudden change to engender sloth rather than energy, it fell short of the existing requirements of members of the agricultural community in some other parts of the country. The inequalities in existing rents are due to causes which have their roots in the past history of the best part of a century. The density or sparseness of population in different districts; the quantity of unreclaimed land available to meet the requirements of a growing community; the energy of particular landlords; the proximity or distance of courts or magistrates

able to repress the energy, when it exceeded the bounds of law ; the force of resistance offered by the ryots, varying widely in different parts of the country ; the indolence of other landlords; the frequency of Government management ; the irregular incidence of famine ; the unequal opening of the country by railways and roads, in respect of which all districts do not yet enjoy equal facilities ; the action of the great rivers —these and other causes have produced inequalities, of which we think that account must be taken in any endeavour to settle rents or the enhancement of rents by legislation. We are therefore all agreed that existing rents should be taken as the basis of operation ; in other words, that no attempt should be made to replace these existing rents immediately by any new and uniform standard ; and that, apart from the usual and recognised grounds of abatement, there exists no necessity for reducing rents generally in any part of the country. At the same time we think that, in regulating future enhancement, regard may reasonably be had to existing inequalities, and that landlords, who have already benefited more than other landlords by the favorable action of some of the causes above enumerated,, are not entitled to an equal accession of advantage in the future." Having regard to this theory of rent and to the power, which shall regulate the determination of rent, the Commission have offered the new definition of "rent." In what sense is, however, the rent, paid by ryots or tenure-holders in Government khas estates distinct from the "rent" defined in this Bill ? The only distinction drawn is the introduction of the term "proprietor." The Government will not be treated as an ordinary proprietor, and so it will escape the rules and regulations prescribed in this Bill for the determination of rent. The practical effect of the new definition of "rent" will be to place the Government above the ordinary law of the land in the regulation of its relations with tenants in its khas estates.

V.

We propose to address in this article a preliminary argument. We will resume the detailed criticisms of the Bill in our next.

Whatever Sir Ashley Eden's shortcomings, no one can accuse him of being a sensational or hysterical governor. He is a sound, practical, sober man of business; he undertakes nothing in a vain-glorious spirit or with an eye to popularity. On the contrary he not unfrequently pulls the other way. A man of strong convictions he has a plain way of stating his convictions and a still plainer way of enforcing them, and this process as we see from experience has a tendency to detract from his popularity. If Sir Ashley is not sensational, he is much less sanguine in legislation. He is fully conscious of the evils of excessive and hasty legislation, and is therefore extremely loath to grind the legislative mill except under absolute necessity. He is, however, now on his trial on the subject of legislation. None has been so hotly opposed to Mr. Whitley Stokes' legislative experiments than Sir Ashley Eden, but he is now being driven to the same stage by the youthful enthusiasm

of some of his advisers. The amendment of the Rent-law of Bengal has been the subject of discussion with the Government of Bengal since the time of Sir William Grey: Sir William transferred the trial of rent-suits from the Revenue Courts to the Civil Courts, but made no change in the substantive law. Sir George Campbell had strong views regarding the Rent-Law, but he found the task too much for him, and so he gave it up. The anti-landlord policy of Sir George had, however, produced one effect—it incited the tenantry in some of the Eastern districts to rise against their landlords and to withhold rents. He did not stay in the country long enough to quiet the storm, which he had raised, and it fell to the lot of Sir Richard Temple to undertake the task. Sir Richard passed the Agrarian Disturbances Bill, but happily there was no necessity to put it into force. It was enough to pass the law. But the question of facilitating the collection of rent nevertheless pressed. The Government, which compelled the zemindars to collect on its own behalf the Road and the Public Works Cesses from the ryots, and in not a few cases to advance the same from their own pockets, was under a pledge to simplify the procedure for the recovery of rent. Sir Ashley Eden on the assumption of his high office declared his intention to redeem that pledge. He repeated the pledge when the Public Works Cess Act was passed in 1877. To prove his sincerity he appointed a Committee consisting of Mr. Reynolds, Mr. Mackenzie, Mr. O'Kinealy, Raja Degumber Mitter, Maharaja Jotendramohun Tagore, and the Hon'ble Kristodas Pal, to draft a Bill for the purpose. This Bill was duly submitted, introduced into the Bengal Council, circulated to the district officers for opinion, and also reported upon by the Select Committee. It was, however, ultimately discovered that the proposed Bill would be mere patch-work, that the question of the speedy recovery of rent was intimately bound up with that of enhancement of rent, and that if the last question could be satisfactorily solved, there would be no difficulty in solving the first. The Government accordingly decided to appoint a Commission to consolidate the Rent-Law, but it was never for a moment intended that radical alterations would be made in the relations between the landlord and tenant. Strange to say the Commission have worked just the opposite way. They have absolutely done nothing in the way of facilitating the collection of rent, they have not improved the law for the enhancement of rent, but they have proposed revolutionary changes in the status and rights of the landlord. Indeed, the new Bill is looked upon as a Confiscation of Rights Bill. Before submitting it formally to the Legislative Council Sir Ashley has very properly invited the expression of the opinion of all classes of the community. This is as it should be. Whatever the changes in the law, which might be ultimately agreed to, the fullest opportunity, we submit, should be given to the public to discuss the measure. But the short time allowed will entirely defeat Sir Ashley's object. The Board of Revenue has for instance been called upon to submit its opinion in November with a review of the opinions of the district officers. We do not know what time has been prescribed by the Board to the district officers, but we should not be surprised if the Board should ask the Commissioners to submit their reports by the 15th of October, and the Commissioners in

their turn should ask the district officers to submit their reports by the 30th of September. In other words the district officers would have scarcely two months' time to read the voluminous reports of the Rent Commission and to comment upon them. But the time prescribed by the district officers to their subordinates and others is simply ridiculous. A Munsif, we have just been told, has been called upon to submit his opinion within a week. Now, it takes one more than a week to read through the report and the bill. Could anything be more pernicious than this high pressure for opinions on the bill? We cannot believe that Sir Ashley Eden is aware that this farce is being played out under color of his authority. Then, again, the Government has directed that the district officers should report after consulting both zemindars and ryots on the subject. Now, we ask, is two months' time sufficient for a satisfactory performance of this stupendous work? We believe the Government is in earnest in this matter; it really wishes to know the opinions of the district officers, but who knows better than the Lieutenant Governor himself that it would be simply trifling with them to require them to give their opinions on the new Bill in two months. In the first place the district officers are now-a-days very hard-worked—the merest details take up most of their time, and they have not therefore the necessary leisure to study and digest the voluminous report of the Rent Commission and the draft Bill. Then since the transfer of the rent-suits from the Revenue Courts to the Civil Courts their knowledge of the working of the Rent-law has become rusty, and they must try to brush up their memory. Further, they can have little opportunity to consult the zemindars and ryots in the interior from their sudder stations. In the approaching winter they will be out on tour, and then they will have the best opportunity of talking with the zemindars and ryots on the subject. But in the meantime the zemindars and ryots ought to be placed in a position to understand the report of the Commission and the Bill, and that can only be done by translating both the documents into Bengali and Hindi. We do not know whether the necessary orders have been given for the translation of the Report and the Bill; if orders have been issued, it will take the Translation Department at least two months to bring out the translations, and in the meantime the period allowed to the district officers to report will have expired! As for the general public, the bulk of the people interested in land do not know English; and they will not be able to read a line until the translations are published. But if we understand aright the spirit of the Government letter to the Board, the Bill will be introduced into the Bengal Council in November. We must strongly deprecate such hasty legislation. We know that such haste is not in unison with the spirit of Sir Ashley Eden's administration. But we do not know what he will do in this particular matter. In the first place he is being pulled by theorist advisers, who carried away by their own enthusiasm cannot brook delay in reconstructing society in Bengal according to their own ideas of Arcadian bliss. Then they have found a powerful ally in Mr. C. H. O'Donnell, whose recent pamphlet on Behar has attracted the attention of the Secretary of State, who it is said has urged the Government of India to enquire into and redress at once

the evils exposed by Mr. O'Donnell. Further, Sir Ashley may give way to an amiable weakness of associating his name and reign with the greatest measure of land-law reform, as its authors seem to regard it, that has ever been propounded by the British Indian Government. All these circumstances tend to induce Sir Ashley Eden to take to hasty action. But we earnestly hope that he will not commit himself to it. He ought to remember what he has himself so often said that a greater evil could not befall a country than hasty legislation. The subject, which awaits his decision, is one, that had baffled the intellects of some of the ablest and most experienced officers of Government in days gone by. Too much care cannot therefore be taken in considering the report of the Rent Commission and their draft Bill. With all deference to the Commission we must candidly confess that those members of it, who by the accident of their position have stamped their genius upon the Bill, have not had much practical experience of the Rent-law. Mr. Mackenzie, who is reported to have overshadowed his colleagues in the Commission by reason of his status as the confidential adviser of Government, has not had perhaps more than twelve months' experience of district work in a single district, and it is doubtful whether he has ever tried a rent-suit. Dr. Field's experience lay in the judicial line, and he has not therefore seen the actual relations between the landlord and tenant. Mr. O'Kinealy has certainly more experience, but on this subject we fear he has been carried away by his red-hot Irish feeling. Mr. Dampier, the President of the Commission, is certainly the ablest Revenue officer in the country, but we fear he was physically unable to cope with the hot-blooded young men round him. Mr. Harrison brought considerable local experience to bear upon the deliberations of the Committee, but he too was swamped by the trio. Such being the case we do hope that the Lieutenant-Governor will not consent to allow the Bill to be passed in hot haste. He ought to give the public and the district officers at least twelve months' time to discuss it. The Bill ought not to be laid before the Bengal Council till the winter of 1881.

VI.

A CONSIDERABLE portion of the proceedings of the Rent Commission is taken up with a discussion of the status and rights of the different classes interested in land. As much misunderstanding seems to prevail respecting the law on the subject, we will reproduce what we wrote before regarding the tenures existing at and about the date of the Permanent Settlement. They may be classed as follows:—1st. Such as without the right of property have still the right of occupancy attached to them, subject to the payment of such rent, progressive or otherwise, as may have been stipulated between their holders and the zemindar, when the latter entered into engagements with Government for the payment of public revenue. These are the dependent talooks described in Section 48 of Regulation VIII. of 1793. 2nd. Such as have the right of occupancy guaranteed at a fixed rent, in consideration

of their having been so held for twelve years prior to the Decennial Settlement. These are the istemrari or mokururi tenures described in Section 49 of the above Regulation. 3rd. Khoodkasht tenures described in Clause 2, Section 60, Regulation VIII. of 1793, or tenures which were held by resident cultivators, at the time when the Decennial Settlement was concluded, and which tenures were continued to them, subject to the payment of rent at the Purgunnah rate. 4th. Such as are governed by written contracts, entered into between the tenants and the landholders, prior or subsequent to the Decennial Settlement for lands other than those described in Sections 48, 49, and 60, Regulation VIII. of 1793. 5th. Such as are held from year to year, or tenures at-will. The condition of these tenures was gradually affected by the Revenue Sale Regulations promulgated from time to time. By the Regulations passed prior to Regulation XI of 1822, dependent talooks of the nature described in Section 48, Regulation VIII. of 1793, which existed at the Decennial Settlement, and which were not found at the time or subsequently to be liable to enhancement, as provided in Section 51 of that Regulation, were declared to be exempted from enhancement, and the holders not liable to dispossession, except upon proof in a regular suit by the auction purchaser of his title to enhance the rent. Talooks existing at the Decennial Settlement, which had been proved liable to increase in the manner stated in Section 51 Regulation VIII. of 1793, were liable to enhancement at the Purgunnah rate, but the holders of them were not subject to dispossession. Talooks created since the Decennial Settlement, like the above, were declared liable to enhancement at the Purgunnah rate, with the same reservation as to dispossession. Istemrardars were held exempt from dispossession or enhancement. Khoodkasht ryots holding their lands prior or subsequent to the Decennial Settlement were held to be liable to enhancement at the Purgunnah rates, but not to dispossession. Pykasht ryots were subject to dispossession at the option of the purchaser, at the expiration of their leases. It having appeared that the Purgunnah rates were various, fluctuating and uncertain, it was provided by Section 7, Regulation V. of 1812, that the lands liable to enhancement under the operation of the Sale Laws should be assessed at the rates obtaining for the time in adjacent lands of the same description. It would appear from the foregoing that, up to 1812, the Legislature considered it a sufficient protection to the public revenue, as well as the interests of the purchaser, to authorise the cancelment of leases (except those of the exempted classes defined above,) and the enhancement of the rates according to a fixed rule, that is, the Purgunnah rate, if any there were, or the rate obtaining for the time being in similar lands adjacent, and did not contemplate ejectment, except in cases provided in Section 7, Regulation IV. of 1794, that is, when the terms of settlement according to Purgunnah rates, were declined by the under-tenants. Regulation VIII. of 1819 took a different view of the principle which should govern under-tenures after revenue sale—evidently to check frauds, which must have been extensively practised by the proprietors. This principle of annulment of tenures was more clearly and in unmistakeable language laid down in Regulation XI. of

1822, and in Section 30 of that Regulation it was declared that a revenue sale, for reasons stated therein, annulled all the tenures created subsequent to the Settlement, or such as the original engager might have set aside, except *bona fide* leases of ground for houses, &c., saving likewise, as enacted in Section 32, the exempted classes of tenures which were defined and protected in the following manner:

"The above rules, or any other rules contained in the existing regulations, by which persons are declared competent, under certain restrictions, to annul engagements contracted between former proprietors and their under-tenants, and in certain cases to enhance the rent payable by such tenants, shall not be construed to entitle the purchasers of land at public sales to disturb the possession of any village zemindar, putteedar, moffusil talookdar, or other person having an hereditary transferable property in the land, or in the rents thereof, not being one of the proprietors party to the engagement of settlement, or his representative. Nor shall the said rule be construed to authorize any purchaser as aforesaid to eject a khoodkasht kudeemee ryot, or resident and hereditary cultivator, having a prescriptive right of occupancy. Nor shall a purchaser demand a higher rate of rent from an under-tenant of either of the above descriptions, than was receivable by the former malgoozar, saving and except in cases in which such under-tenants may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former malgoozars from the old established rates, by special favor, or for a consideration, or the like, or in cases in which it may be proved that, according to the custom of the purgunnah, mouzah, or other local division, such under-tenants are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government."—*Section 32, Regulation XI.* 1822.

Now the village zemindars and others who are described to have an hereditary transferable property in the land, must, to be consistent with the principle laid down in Section 30, mean such as had or acquired rights of occupancy or property in the village or land, in the manner defined in Sections 48, 49, and 51 of Regulation VIII of 1793, and Section 14, Regulation I of 1801, and not in reference to tenures which originated with the original engager or his successors, or which he could set aside as provided by Section 51 of Regulation VIII of 1793, but nevertheless the wording "hereditary transferable property in the land" was liable to considerable misconstruction, inasmuch as it was considered to apply to all tenures which the holders had come to the possession of by purchase. The Board of Revenue, in their letter to Government dated the 13th March 1838, have pointed out and discussed this liability to misconstruction. In pursuance of the principle laid down in Section 30, Regulation XI of 1822, khoodkasht tenures created since the Decennial Settlement were declared liable to be annulled, and the latter part of Section 32 provided as follows:—"Nor shall the said rule be construed to authorize any purchaser, as aforesaid, to eject a khoodkasht kudeemee ryot, or resident or hereditary cultivator, having a prescriptive right of occupancy." This provision clearly applied to those khoodkasht ryots, who held lands at or before the Settlement, and whose right of occupancy, on payment

of rent according to a fixed rule, is guaranteed by Section 60 of Regulation VIII of 1793. The wording of the Section, it should be observed, has given rise to considerable doubt and misapprehension as to the precise nature of the tenure which it was intended to protect from annulment, for, it is contended, the tenures which have passed through more than one generation would acquire the character of a hereditary khoodkasht tenure. But this reasoning is hardly consistent, for a tenure in one case may pass through three generations during the time that another has not passed through one, and it will be given preference to not by the length of possession, but by the varying rate of annual mortality which might prevail among the occupiers of the tenure. Such an interpretation besides would be most indefinite and inconsistent with the principles clearly and broadly laid down in Section 30. The doubts and uncertainties which the provisions of Section 32, Regulation XI of 1812 gave rise to, and which are alluded to in the Board's letter cited above, so far as the village zemindars, &c., were concerned, were cleared up by Act XII of 1841, and, subsequently, Act I of 1845, and the classes of tenures which the first portion of Section 32, Regulation XI of 1822 intended to protect were clearly defined in Section 26 of the Act: Firstly,—Tenures which were held as istemrari or mokurruri, at a fixed rent more than twelve years before the Permanent Settlement. Secondly,—Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to increase of assessment, on the grounds stated in Section 58, Regulation VIII of 1793.—Section 26, Act I of 1845. The khoodkasht tenures were, however, left with as great liability to misunderstanding as in the latter part of Section 32, Regulation XI of 1822; but that the Legislature only meant to protect kudeemee khoodkasht tenures having rights of occupancy at fixed rates, or at rents assessable according to fixed rates, viz., such as existed at or before the Settlement, and not created subsequently, may be gathered from the observations of the President in Council in the table of remarks upon the Sale Law of 1841, in reference to the suggestions of the Landholders' Society upon this class of tenures. We give below His Honor's remarks:

"But it may be remarked that, with one addition, the classes of tenures saved by this Section are the same as those saved under the present law; and the descriptions of them are the same in substance here as in the present law. It is not the intention to create any rights not before in existence. All ryots who had, at the Settlement, hereditary rights, and all those who succeed them, are intended to be maintained after a sale with their right intact. This law protects no other ryots. With other ryots it is intended that an auction purchaser shall be at liberty to do whatever the old proprietor could have done, supposing him to have entered into no engagements with them. But it is not intended to give an auction purchaser power to do more than this. An auction purchaser, under the present law retained in this draft, obtains powers with which the old proprietor has parted, but he obtains no power which the old proprietor never had. If the general laws are too vague or obscure on this important subject, they may be amended by a separate enactment, perhaps with better effect than by a Clause of the Law."

Mr. Ross, then a Sudder Judge, afterwards Deputy Governor of Bengal, thus wrote in a minute dated the 6th March 1827:

"That all resident ryots are entitled, according to the ancient law and custom of the country, to occupy the lands they cultivate, so long as they continue to pay certain established rates of rent, as is assumed in the preamble to the proposed Regulation, is, I think, also questionable: such a right is not claimed, I believe, by mere ryots, whether resident or non-resident in the Upper Provinces; and if claimed in the Lower Provinces, it could not, I apprehend be established by a reference to either the ancient law or the ancient custom of the country. It would be difficult to show when the law referred to was in force; and if it ever was in force, it would be still more difficult to prove that it intended to confer upon mere cultivators a right to derive any greater advantage from the cultivation of the lands allotted to them, than that for which they first undertook to cultivate the allotment: in other words, a right to share in the increasing value of lands, a right which the privilege of continuing to cultivate the same allotment at fixed rates of rent would really amount to. As to the custom of the country, it has always been opposed to such a privilege, it being notorious that the zemindars and other superior landholders have at all times been in the practice of exacting from their ryots as much as the latter can afford to pay.

In point of fact, it is impossible to establish rates of rent which shall always continue equitable, or to enforce adherence to rates arbitrarily fixed, after the lands have become capable of affording higher rates in consequence of the enhanced value of their produce, without conferring upon the cultivators a right to a progressively increasing share of that value, a right which they never enjoyed and do not pretend to claim and which would be superior to, and incompatible with, the right of property in the soil, which has been recognized to be vested in the zemindars".

The point is thus made clear by high authority, but it has not been accepted by the majority of the Rent Commission. We will recur to the subject in our next.

VII.

A Synopsis of the new Rent Bill shewing the material changes contemplated by it.

In order to facilitate the discussion of the proposed Rent Bill we publish below a synopsis of the principal provisions of it, indicating the changes contemplated by it. We are indebted to a friend for this synopsis:

"All the definitions given in section 3 are new. The definitions of "ryot" "rent" and "land" require carefull consideration inasmuch as they introduce changes in the substantive law or the law of procedure. A ryot in possession of 100 bigahs of land or more let to him at one time is recommended to be a tenure-holder with much greater rights (section 9). Rent payable by ryots below the status of "occupancy ryot" is not included in the definition of "rent;" no definition of "occupancy ryot" has been given but the meaning of the phrase is clear from its frequent use in the Bill and also from the definition of "occupancy holding." Land used for dwelling or manufactures are included in the definition of land, and suits therefore for the rent of such land will follow the procedure for suits for agricultural land."

Section 6. The exception to this section is new. Tenures and under-tenures situate in estates not permanently settled are declared not entitled to the protection arising from 20 years uniform payment of rent. As regards holder of permanently settled estates the law ramains unchanged.

Section 9. The maximum of 30 per cent. fixed as the limit of a tenure-holder's profits is new. There is no law on the subject at present, but section 8 Regulation 5 of 1812 fixed the limit at 10 percent. of his collections.

Section 10. This section for the first time proposes that the rent of a tenure-holder once enhanced shall not be liable to enhancement for a period of 10 years next ensuing.

Section 11 and 12. Section 11 converts all ryots who have obtained possession of 100 bigahs of land which were let to them at any one time into either tenure-holders or undertenure-holders, and Section 12 fixes the minimum profits of a réclaiming tenure-holder at 20 per cent. and gives the court power to allow more profits to such tenure-holders.

Section 17. The exception to this section excludes ryots in estates not permanently settled from the protection arising from 20 years uniform payment of rent.

Section 19. Explanation 3 (a) and (c). The explanation extends the right of occupancy to persons holding under a Mukurruridar or Istemrardar and also to those holding under a ryot having a right of occupancy. The present law has been interpreted by the High Court to prevent the growth of a right of occupancy within a right of occupancy.

Section 19. Explanation 4. This explanation takes away the right of occupancy from Makurruridars and Istemrardars.

Section 20. This section prevents the mortgage of a right of occupancy but makes such a right saleable in execution of a decree for arrear of rent and allows the ryot to transfer it by sale, gift or devise. This is altogether new. It is an important question and the discussions which were invited on it should be borne in mind.

Section 20 (c). This clause abolishes altogether the law of ejectment of occupancy ryots for arrears of rent.

Section 21. This section limits the ratio of produce payable to the land-holder for khamar lands and for lands of which rent is payable in kind to 50 per cent. It should be borne in mind that both in Bengal and Behar the ratio is at present in many cases 9-16 or 10-16 of the produce.

Section 22. The illustrations appended to this section should be carefully considered and it should be seen whether some of them do not materially curtail the grounds on which enhancement of rent can be had. It should be remarked that no corresponding illustrations are appended to section 25 which provides for abatement of rent.

Section 22. Explanation 3. The table of rates mentioned in this section is provided for in section 102 of the Bill. It should be well considered whether such a table of rates should be the record of "prevailing rates" for purposes of enhancement of rent.

Section 23 (a). In cases where the productive powers of the land or the price of produce has increased otherwise than by the agency or at the expense of the landlord or of the ryot, this section divides the benefit of such increase equally between the two. It should be seen whether such a division would be equitable as regards all districts.

Section 23, (b). This clause declares that the enhanced rent obtained on the ground of increase of value of produce should not be more than double the formar rent.

Section 23, c. This clause declares the enhanced rent obtained on any ground should not exceed one-fourth of the average annual value of the produce of the land. This recommendation should be very carefully considered and in so doing, the ratio which rent bore to produce during the Hindu and Mahomedan Dynasties, and at the time of the creation of the Permanent Settlement should be carefully considered. It should also be seen whether such a limitation, will be equitable in all districts and whether it would not stop altogether enhancement of rent in some districts.

Sec. 23 cl. (c). This clause further provides that an occupancy ryot shall not be able to enhance the rent of his Korfa to more than 30 per cent of the value of the produce, if such Korfa was held for more than 12 years. It should be seen whether this would be at all practicable. The rent of the actual cultivator must be in spite of all legislation determined by competition. Besides, there is no restriction to the creation of a second grade of sub-lessees. What rights will *they* have ?

Sec. 23. (d). This clause provides for progressive enhancement that is, it gives the Court power to give the landholder a small increase yearly by degrees in 3,4 or 5 years, instead of enhancing the rent to the proper rate all at once. It should be considered whether the necessity of such a provision was ever felt and whether it is at all necessary.

Sec. 23, (e). This clause directs the enhanced rent to be lessened by the amount of road Cess and P. W. Cess payable by ryots. It virtually makes the Government a participator with the landholder in the benefits arising from increased fertility of the land, price of produce, and prosperity of the country.

Chap. IV. Secs. 26 to 31. These are all new provisions. They create a class of subordinate occupancy ryots by providing that a ryot who has held for 3 years and less than 12 years shall be protected from ejectment at the will of the landlord, that he shall be entitled to claim abatement of rent like occupancy ryots, that the landlord shall not be able to enhance his rent at his will and pleasure, that if the ryot thinks that the rent demanded by the landlord is unreasonable he may give up the land and demand from the landlord compensation for disturbance and compensation also for costs incurred by him in building houses, digging tanks or wells, making bunds &c. and that he shall be entitled to hold on at the old rent if the landlord does not give him such compensation.

Sections 33-35. Section 33 provides that even ryots who have held for less than 3 years if let into possession otherwise than for a term may not be ejected unless a notice has been previously served on him in the month of *Pous* and Section 34 provides for his eviction and for recovery of damages at full letting value from him if he refuses to quit. The rent of even such a ryot cannot be enhanced unless there is a written agreement or unless he be served with a notice.

Sections 36-40. Section 36 gives all ryots without any limitation whatever as to their status or rights, power to build brick-built and other houses and out-offices on the lands let to them, without the landlord's permission. The right of the landlord to re-enter if the ryot builds a factory or uses the land for other purposes is recognised, but if the landlord fails to give notice to the ryot within a reasonable time, he will be prevented to re-renter unless he pays compensation to the ryot and if he fails to give such notice within 2 years, he loses his right of re-entry altogether.

Section 41. This section extends the right of occupancy to ryots who have held land used for building or other purpose for 12 years and more. It should be seen whether this provision would not give a right of occupancy to shop-keepers, artisans, traders in marts and towns. Is such a provision at all

necessary? Do not persons protect themselves by taking proper leases whenever they require land for permanent residence?

Section 41. (b) This clause make such lands transferable.

Section 42. This section limits the rent of such lands to a maximum of 5 p. c. of the value of the land. What is the usual ratio which the rent of such land bears to its value?

Section 43 44. It was held by Sir B. Peacock in 10 W. R. 15 that the doctrine of merger did not apply to purchases made in this country, but these sections introduce that doctrine with certain conditions. A Putni tenure within a zemindari if purchased by the owner of the zemindari will merge in the zemindari title unless the zemindar executes and registers within 3 months of his purchase a deed declaring his intention to hold the Putni separate from his zemindari title and publishes that deed after the expiry of 3 months.

Section 45. The above doctrine applied to purchases made by Government will give rise to complex considerations. It is declared in this section that it "has been always the law" that in such cases the proprietary title is merged in the paramount title of the State. This is, however, doubtful, see 25 W. R. P. 86. The sums payable by ryots in such estates will not be rent but land revenue.

Sections 46-54. These sections require tenure-holders and ryots to register all transfers by sale, gift, succession &c, in the landlord's sherista within 3 months of the transfer and to pay a small fee for the registration. They also make it obligatory on the landholder to register all transfers of entire tenures and holdings. If the transfer is not registered within 3 months the tenure-holder or ryot will have still the right to get the transfer registered, but in that case he will have to pay a fee which may vary from Rs. 10 to Rs. 1000. If the heir of a deceased tenant or the purchaser at a sale in execution of a decree against the tenure-holder omit to register, the landlord may attach the tenure or hold and keep it in his khas possession, but he shall be answerable to the tenant for all monies collected in excess of rent due to him. If such transfer is not registered before the end of the year the holding will be at the entire disposal of the landlord. The Board has been empowered to prescribe registers for registration of transfer and the landholders will be bound to give copies of entries in such registers to ryots interested.

Sections 55-56. Rent payable by ryots is made payable by 4 instalments, 1st day of *Ashar*, 1st day of *Ashin*, 1st day of *Pous* and 1st day of *Chait*, and rent payable by tenure-holders is also made payable by such instalments unless there is a custom or agreement to the contrary. All arrears of instalments will bear interest at 12 per cent. unless the tenant can show that he was prevented from paying by causes beyond his control.

Sections 59. Landlords are declared bound to keep book forms of receipts and accounts and to give a statement of account at the end of the year to every ryot who shall want it.

Sections 58-61. The change in the present law made by these sections is to the effect that not only where the landlord refuses to accept a tender of rent, but also in cases in which rent is payable to several coparceners and the tenant is unable to get a joint receipt and in cases in which he entertains a *bona-fide* doubt as to who is entitled to receive rent, the tenant shall be entitled to deposit rent in the Collectorate or Sub-Divisional Treasury within 15 days after such rent falls due. The Collector is required to post up a notice showing all deposits thus made, and if the person entitled to receive such rent does not take out the money within 15 days of the deposit, the Collector shall issue individual notices on the landholders at their expense.

Sections 62-63. It has been held by a Full Bench of the High Court in Appeal No. 873 of 1879 on the first of June last, that a coparcener has a right to have his share of the rent apportioned by a suit in Court. These sections curtail that right in so far as to limit it only to cases where "two or more persons become separately entitled to separate portions of an area of land." This is a great change in the existing law and should be carefully considered.

Section 64. Both the land and the crops on it have always been deemed to be hypothecated for the rent of a tenure or holding, but the Bill declares the land only to be so hypothecated. It is silent as to distraint of crops and the Report recommends that the law of distraint should be abolished. Crops may be attached before decree (Section 181) but not until a suit has been instituted and the expenses of such a suit incurred. This is a radical change requiring grave consideration.

Sections 65-70. These sections empower the District Judge on the application of the Collector or of a coparcener or of a ryot to appoint a manager in a joint estate which shall thereupon be under the management and control of such manager to the exclusion of the proprietors themselves. It should be seen whether these sections would not give a turbulent ryot or a person whose share is very small or perhaps disputed a handle to harass and annoy the proprietors.

Section 72. It should be considered whether the limitation imposed upon custom to the effect that it must be approved by the Revenue Authorities would not interfere with the just rights of Zemindars in the collection of customary salamies and fees for letting land, allowing earth to be dug for manufacture of bricks, allowing trees to be cut &c.

Section 77. This section declares a ryot entitled, any custom to the contrary notwithstanding, to cut down and appropriate trees planted by him or by a ryot from whom such holding has been derived.

Section 79, clause 4. By this clause a landlord cannot consider a tenancy determined and let a holding to a new ryot unless one year has elapsed since the abandonment of the land by the previous ryot. The land will, in the meantime, remain uncultivated and the landlord must lose his rent for one year. It should be seen whether the interest of the ryot will not be sufficiently protected if the landlord lets the land to a new ryot at the cultivating seasons.

Section 80. It has been held by the High Court that when a ryot is ejected from a land the crops on the land go to the landlord with the land (51. L. R. 135). This section provides that the ryot shall be entitled to the crops.

Section 86. This section declares the Behar ryots entitled to commute rent payable in kind to an annual money rent.

Section 90, Explanation, takes away the power of Courts to award interest on arrears of rent in cases in which damage is decreed to the landlord.

Section 95 directs the landlord to sue for enhancement of rent on the ground of the rise of the value of produce in the Court of the Collector, but gives him the option to elect the Civil Court or the Collector's Court, if he sues to enhance rent on any or all the 3 other grounds.

Section 96. The notice required to be served under the present law previous to the institution of a suit for enhancement of rent has been done away with, but in its place this section provides that the suit, must be instituted within the month of Aghrahayan and this section further provides that in his plaint the landlord should not only state the rent paid by the ryot, but also the rates of rent at which the land was held.

Sections 99-131.—Several of the provisions contained in these sections are altogether new and should be carefully considered. The Collector may be moved (1) by a landholder (section 99) or (2) by a number of landholders (section 115) or (3) by the District Judge, in cases in which he thinks such a course

desirable from the number of suits pending in a Civil Court subordinate to him (section 130) or (4) the Collector may of his own accord, with the sanction of the Lieutenant-Governor, where he apprehends an agrarian disturbance (Section 131) prepare, with reference to any estate, tenure or other local area——

1. A table of rates (section 102) which shall contain a table of the different classes of land which obtain in the estate or locality, the prevailing rates of rent payable for each class of land and the rates of enhanced rent leviable on such lands on the 3rd and 4th grounds of enhancement, *i. e.* on the ground of increased productive power of the land and on the ground of increased value of produce.

2. A settlement Jumabandi (Section 113) or a table showing the names of ryots in an estate or tenure, the qualities of land held by each, and the amount of rent payable by each, and

3. An enhanced Jumabandi (Section 108) or a table showing the names of ryots in an estate or tenure, the quantities of land held by each, the rents theretofore paid by each, and the enhanced rents payable by each, and the grounds for such enhancement.

The provisions for a settlement Jumabandi refers only to such landholders who after coming into possession of a new property are unable by reason of a combination among the ryots to ascertain the names of the ryots who hold lands, the areas of their holdings or the amounts of their rent. In such cases the provisions of the present law have been left unaltered. The Collector is empowered to measure and to prepare Jumabandies, and the lands of those ryots who may fail to appear within a reasonable time after publication of notice are declared at the absolute disposal of the landholders (Section 123).

The applicant for a table of rates is required (Sec. 101) to file with his application a draft table of rates. The Collector shall thereupon cause it to be published in the Mal Kutchery and in some conspicuous place of the estate and also by beat of drum and invite objections, if any, to be presented within one month. The Collector shall take the objections, if any, into consideration and prepare a table of rates which he shall cause to be published and allow one month's time for reception of objections to it on the part of the landlord and ryots. After that time he shall submit the table of rates with the objections to the Commissioner of Revenue or Board of Revenue according as the Lieutenant-Governor by a set of general rules shall direct, for approval. The Commissioner or the Board shall have power to order alteration, amendments, and a reconsideration by the Collector. But no appeal shall lie to the Board or the Commissioner either on the part of the landlords or of the ryots. The expenses for preparing the table of rates must be paid wholly by the applicants.

After the table of rates has been prepared the landlord should try to enhance the rents of ryots amicably, but if he fails to do so on account of "the recusant or unreasonable conduct of the ryots," he may apply to the Collector for an enhanced Jumabandi, which the Collector shall thereupon prepare and he may in such a case direct that the whole of the costs shall be paid by such ryots (Sec. 106). But Sec. 128 provides that the costs payable by any ryot shall never exceed one year's rent as settled by the enhancement proceedings. There is an appeal to the Commissioner by the landlord or by the ryots within one month of the date of the publication of the enhanced jumabandi.

For the purpose of making the above settlements the Collectors are vested with the powers enjoyed by the Civil Courts under the Code of Civil Procedure. They are further directed to prepare annual price lists (section 122) and they are declared subject to the control and supervision of the Commissioners and the Board. The costs which the applicants or ryots have been

made liable to pay include the whole or portion of the pay of the Collector or Deputy Collector, the salaries of ministerial officers and contingent expenses.

The table of rates and enhanced jumabandi shall held good for at least 10 years after which the landlord may apply for a fresh jumabandi.

Sections 133-145 reproduce the provisions of Reg. VIII of 1819 and other laws with regard to Putni and other tenures.

Section. 150. (b). This provision is new. It declares that notices served upon Naibs or Gomastas shall be deemed good service of notice on the landlord himself.

Section 151. The bill makes no provision for suits for Pattahs and Kabuliats as provided for by the present law, but it provides by this section for suits for the determination of conditions of tenancy either by the landlord or by the ryot. It should be seen whether this would or would not be a better substitute than suits for Pattahs and Kabuliats.

Sections. 165 to 200 relate to the procedure of suits. The Procedure of the Civil Courts has been recommended.

Sections 203-208. These sections introduce a change in the present law. They recommend that the sale of a tenure or holding for arrears of rent should be in the first instance subject to the encumbrances created by the defaulter, and it is only when the amount of bid does not cover the amount of the decree and costs that the tenure or holding shall be again put up to sale and sold free of encumbrances. It should be carefully considered whether these provisions will not encourage fraud and lead to increase of litigation.

Section 210. This section as well as Art. 16 of Schedule 3 appended to the Bill allow the purchaser of an estate or tenure only one year's time to proceed to avoid and annul encumbrances imposed thereupon by the defaulter. The present law (Art. 121 of Schedule of Act 15 of 1877) allows 12 years for the purpose.

Section 220. This section provides that there shall be no appeal from a decree in a suit for arrears of rent in which the amount claimed does not exceed Rs. 10.

The third schedule appended to the Bill requires careful consideration. The periods of limitation prescribed for some suits are longer and for others shorter than what the present law allows. Art. 15 conflicts with the provisions of section 40 of the Bill.

VIII.

In our last we discussed the rights of several classes of ryots in Bengal. The greatest uncertainty and misunderstanding have undoubtedly prevailed regarding the rights of khoodkasht ryots. Sir Frederic Halliday, in commenting on the Rent Bill of 1859, remarked, "*perhaps* the opportunity should be taken to define *what has always needed definition*, namely, the terms *khoodkasht* and *kudeemee ryots*" Mr. Sconce, then a Judge of the Sudder Court, wrote: "Is there any distinction between the word *resident* and word *hereditary*, and if there be a distinction, to what does it amount?" He thus answered the question himself—"he *supposes* the word *resident* imports *permanent residence* and the latter *hereditary occupancy*, and that both are the equivalents of khoodkasht and kudeemee ryot." In other words the terms *khood-*

kasht and *kudeemee* mean one and the same thing, but the Legislature did not clear up the obscurity. It simply laid down the arbitrary rule of twelve years' occupancy. Referring to Mr. Mackenzie's minute on the subject Dr. Field pertinently remarks: "With reference to Mr. Mackenzie's proposal (paragraph 6 of his Note) to reduce the period of prescription necessary to entitle to protection from twelve to three years, I entertain grave doubts as to its policy and expediency. The experience of the past is strong to show that, if for the classification of ryots in the existing law a new classification be now substituted, the result will be a fresh crop of litigation—a fresh period of disturbed and uncertain ideas as to rights. *Khoodkasht ryots* were the only ryots privileged and protected up to the passing of Act X of 1859. Two elements went to make up a *khoodkasht*: (1) residence in the village; (2) occupation of land forming part of the village. Act X dispensed with the former, and settled the unsettled ideas as to the latter by fixing a twelve-year period of prescription. It is not said in the interest of the ryots that—(1) this change in the law has prejudiced them as a body; (2) that we ought to restore the law to the *status in quo ante* Act X. Before we can fairly estimate the value of these two allegations, we must have a definite idea as to what was the state of the law before Act X was passed. This law was, I am afraid, not very definite, and it is therefore difficult to have a definite idea about it. It has been said that any period of residence, however short, and any occupation of land, however brief were sufficient to create a *khoodkasht*, and that there is no doubt about this. To show that there is very considerable doubt, it is unnecessary to multiply authorities. The matter was very fully discussed and inquired into in the judgements in the Great Rent Case, from which I shall quote two opinions." He then quotes Mr. Justice Campbell and Mr. Justice Steer. Mr. Justice Campbell remarked: "There was doubt as to the mode or prescription by which a *khoodkasht* or occupancy tenure was acquired, and which tenures were of this character. It was not certain whether mere settlement in the village on the ordinary terms, without limitation of tenure, gave such a right, or what length of prescription established that right. The various Sale Laws have also introduced a large element of confusion; different estates being variously affected according to the date of sale. And, what is perhaps most important of all, owing to the absence of public records in Bengal, the perishable nature of private evidence, and the discredit attaching to private documents and oral evidence in this country, it was very difficult to prove whether a ryot's holding was really ancient, or what was the date of its creation. The oldest holdings were imperilled by the absence of reliable proof." This implies that a *khoodkasht* ryot could not be a tenant of yesterday, and if this point be conceded, then the argument that all resident ryots, whatever the period of their occupancy, are *khoodkasht* ryots, necessarily falls through. Mr. Justice Steer was much more emphatic. He wrote: "While no doubt exists as to the right of those ryots who, from generation to generation, have cultivated the lands of the village in which they reside for a period antecedent to the Permanent Settlement, and who without any doubt are entitled to be called and classed with *khoodkasht* ryots, the greatest

doubt exists as to whether any other class or description of ryots are entitled to be called *khoodkasht* ryots. If any ryot, whose tenure came into existence since the Permanent Settlement, can by any means be called a *khoodkasht* ryot at all, it certainly is not the ryot who simply lives in the village and cultivates the land of the village. To be a *khoodkasht* ryot at all implies that the ryot must not only be a cultivator of lands belonging to the village in which he resides, but he must be an hereditary husbandman. A *khoodkasht* right is not acquired in a day, but is transmitted; and it has never, so far as my knowledge extends, been laid down what exact length of holding gives a title to a tenant to consider himself a *khoodkasht* ryot." Dr. Field next quotes Mr. Justice Trevor, who had taken a wide view of the position of the *khooodkasht* ryot. "*Khoodkasht* ryots," says Mr. Justice Trevor, "are simply cultivators of the lands of their own village, who, after being once admitted into the village, have a right of occupancy so long as they pay the customary rents, and therefore a tendency to become hereditary, and with an interest in the produce of the soil over and above the mere wages of labour and the profits of stock; in other words, above the cost of production." But he goes on and says: "But when Regulation XI of 1822 was passed, the use in section 32 of that law of the terms *khoodkasht kadeemee* ryot, or resident and hereditary ryot with a prescriptive right of occupancy, to designate the cultivator, who would not be liable to eviction, on a sale for arrears of revenue, gave rise to the doctrine that *khoodkasht* ryots who had their origin subsequent to the settlement were liable to eviction, though if not evicted, they under section 33, could only be called upon to pay rents determined according to the law and usage of the country; and also *that the possession of all ryots whose title commenced subsequent to the settlement was simply a permissive one*, that is, one retained with the consent of the landlord. Again, by Act XII of 1841 and Act 1 of 1845 (which repealed the former), a purchaser acquired his estate free of all encumbrances which had been imposed on it after the time of the settlement, and he was entitled, after notice given under section 10 of Regulation V of 1812, to enhance at discretion—anything in the Regulations to the contrary notwithstanding—the rents of all under-tenures in the said estate, and to eject all under-tenants with certain exceptions amongst, which are *khoodkasht kadeemee*, but not simple *khoodkasht*, ryots. It follows that these laws distinctly gave the purchaser the power to eject a *khoodkasht* ryot whose tenure was created after the Permanent Settlement, and, if not ejected, they are liable to be assessed at the discretion of the landlord." Let us now turn to the opinions of the authors of the Permanent Settlement, Mr. Shore, (afterwards Lord Teignmouth) wrote: "It is understood that the ryots by *long occupancy* acquire a right of possession in the soil, and are not subject to be removed. ..... To require that the pattahs should be given for a definite time, as proposed by some of the Collectors, would diminish the force of that prescription which has established a right of occupancy in favor of the ryots." ..... "On the whole, therefore, I do not think ryots can claim any right of alienating the lands rented by them by sale or other mode of transfer, nor any right of holding them at a fixed rent except in the

particular instances of *khoodkasht* ryots, who *from prescription*, have a privilege of keeping possession as long as they pay the rent stipulated for by them." Mr. Shore expressed a strong opinion that no perpetual right of possession, on condition of paying a fixed rent, should be conferred on those ryots who had not *then* a declared or prescriptive title to such. Practically this opinion was embodied in Regulation XI of 1822.

The intention of the Legislature, says Dr. Field, may be inferred from Act XII of 1841, section 27, which speaks of "*khoodkasht* or *kudeemee* ryots having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force." So section 16 of Act VIII (B. C.) of 1862 speaks of *khoodkasht* ryots, or resident and hereditary cultivators. Dr. Field after quoting the above remarks says.:

"I think the above will show that very great doubt and difference of opinion have prevailed amongst the highest authorities as to the mode in which *khoodkasht* ryots were created in more modern days—that the law on this point before Act X was most uncertain—and that the task of attempting to restore that law is now almost an impossible one. The village Community, if it ever existed in Lower Bengal, has long been broken up, and the definition of a "village" would raise insuperable difficulties. Doubtless this was felt by the framers of Act X of 1859, and influenced them to abandon the element "residence in the village." The effect of this was to extend privilege and protection to the *pyekashts*; and the selection of twelve years, as the necessary period of prescription for occupancy, did not of itself cut down the rights of any *khoodkasht*; but, although Act X did not expressly interfere with any customs not clashing with its provisions, people came to consider this Act to be a complete Code, and litigants in consequence made no effort to give evidence of customs. This, and not any inability to prove continued occupancy for twelve years (as supposed by Mr. Mackenzie in paragraph 4 of his Note) I believe to be the measure of the mischief done by Act X. Our new Bill proposes to save such customs expressly; and, this being so, the classification of Act X can no longer be said to cut down the rights and benefits of the ryots as a body. This classification has now been established for twenty years. Change—especially change in the boundaries of established rights—is not advisable; and in the above view of the whole matter, the substitution of a fresh classification of rights is to my mind now inexpedient. That any considerable number of the cultivating class will be benefited by such a change, has not been argued, and would, I think, be very difficult if not impossible to prove. The small portion, in whose interest the change is proposed, have not asked for it, nor have mofussil officers or other persons asked it on their behalf; and I am afraid that the benefit intended for the ryots as a class will be more than neutralized by the disturbance of ideas and by the litigation that will inevitably ensue—by the unwillingness of the zemindars to accept what they will regard as a further encroachment on their rights—and by the lessened estimation and diminished actual value that will necessarily attach to a right of occupancy, when any squatter can acquire it in the short space of three years."

And yet the Draft Bill contains the following provision on the subject:

"A ryot who for a continuous period of three or more but less than twelve years has as a tenant held, or has as a tenant occupied and cultivated land other than *khamar*, *nijjote*, or *sir* land let on lease for a term or year by year,

shall, if evicted from such land on any of the grounds mentioned in Section 26, or if he relinquishes it under Clause (*b*) of Section 27, be entitled to receive compensation for any improvements which he may have made on such land, at any time while he held or occupied it as aforesaid.

Explanation.—The term "improvements" in this Section means works by which the cultivation of land has been lastingly facilitated, or the productive powers of land have been lastingly increased, and includes—

(*a*) the erection of a dwelling-house and office suitable for the habitation of a cultivating ryot;

(*b*) the making of tanks, wells, and other works for the storage, supply or distribution of water for agricultural purposes;

(*c*) works for the drainage of land, or for protection of land from floods or from erosion or other damage by water;

(*d*) the reclaiming, clearing or enclosing of land for agricultural purposes;

(*e*) the renewal or reconstruction of any of the foregoing works, or alterations therein, or additions thereto;

(*f*) the planting of fruit trees.

This is what we call confiscation of rights. Mere tenants-at-will are raised to the rank of privileged ryots, and the landlord is to be compelled to give compensation for disturbance of such ryots. Thus the Rent Commission propose to carry out in India what the British Parliament has rejected in respect of the Irish tenants.

IX.

WITH REFERENCE to our last article under this head we have been asked to state what was the actual position of the zemindar anterior to and at the time of the Permanent Settlement. We are reminded that the Rent Commission have proceeded upon the assumption that the zemindars were not the actual proprietors of the soil, and that they had therefore no right to dispose of the land in any way they might think fit. It is, therefore, necessary to consider who had the property in the land. Those who have studied the literature of the Permanent Settlement have doubtless read Mr. Sheristadar Grant's memoir on the landed tenures of Bengal, in which he repudiated the notion that the zemindars were the actual proprietors of the soil. His dissertation was answered by Mr. C. W. Boughton Rouse in a book replete with stubborn facts and authentic statements, a perusal of which will convince any candid reader as to whether or no the zemindars of Bengal had an hereditary property in land. This book was published in 1791, that is two years before the Permanent Settlement, and dedicated to Mr. Henry Dundas. We will give a few extracts from this book. In his introductory chapter Mr. Rouse thus remarks:

"For my own part, the farther I have carried my inquiries, the more firmly I am convinced, that the state, in which we received the rich provinces of Bengal, Behar and Orissa, was a general state of hereditary property; modified certainly according to the nature and customs of the government which has prevailed there; but nevertheless existing, with important benefit to the possessors, according to the universal sense of the people, sanctioned by the constant

practice of the native princes, and established by immemorial usage from one end of the country to the other.

I did imagine, that this question had received its decision by the common assent of all political parties in the kingdom, resulting from the minute examinations which had been made into the subject, at a period when correct local knowledge was attainable; and by the voice of several statutes passed by the two last parliaments in the years 1871 and 1874:—in which, amongst many salutary regulations, the Zemindars, and other landholders, are distinguished from persons holding mere official nominations, and marked as a class of men eminently entitled to the national protection. I had therefore concluded that they would have been permitted to enjoy, in gratitude and security, that protection held out to them by the Legislature of Great Britain; and should have feared to injure their cause by renewing the discussion, had not the subject been again introduced to the public consideration, in a Tract lately published under the singular title of *Inquiry into the nature of Zemindary tenures in the landed property of Bengal &c., by J. G. late Sheristadar of Bengal.* I must do this gentleman the credit to say, that his sentiments are here delivered without any tincture of party spirit; or personal invective; except only against the great Mahomedan and Hindoo officers, whose opinions have been quoted in a very able performance of Mr Francis, relating to the revenues and tenures of Bengal. By attempting to demonstrate, that the Zemindars, and other landholders of Bengal, have not, nor ever had, any claim of hereditary property; and that they ought to be considered as financial servants only, employed to collect the ground rents of the sovereign as proprietor, or, as the title expresses it having a *tenure in* his landed property; Mr. Grant would seem to invite this country to retract its plighted faith in their favor. I have not a doubt, that he wishes to establish this opinion out of sincere zeal for the public interest and administration, which he imagines would be benefited by annihilating such supposed property. I confess my cordial wishes and endeavours—as far as the endeavours of an humble individual could avail in a great national object,—have gone to promote a contrary system; and as no circumstances have hitherto produced any alteration in my sentiments, I find myself impelled by the importance of the occasion to declare, that I differ from him fundamentally in many articles of fact, justice, and expediency, but shall endeavour to offer such remarks as the subject may require from me, with every possible respect to his industry and abilities."

Mr. Rouse thus describes the situation in which the British Government found the Zemindars:

It appears upon a reference to all the correspondence of the times, and is universally known, that when the dewanny of the three provinces was ceded to us, the country was distributed amongst the Zemindars and Talookdars, who paid a stipulated revenue by twelve instalments to the sovereign power, or its delegates. They assembled at the capital in the beginning of every Bengal year (commencing in April) in order to complete their final payments, and make up their annual accounts; to settle the discount to be charged upon their several remittances in various coins for the purpose of reducing them to one standard, or adjust their concerns with their bankers; to petition for remissions on account of storms, drought, inundation, disturbances, and such like; to make their representations of the state, and occurrences of their districts: after all which they entered upon the collections of the new year; of which however they were not permitted to begin receiving the rents from their own farmers, till they had completely closed the accounts of the preceding year, so that they might not encroach upon the new rents, to make up the deficiency of the past.

In many instances the Zemindars were left unmolested in their several districts, and free from all check or interference, but when they were remiss in their payments, officers of government were deputed under various titles, like the *Connicarii* and *Compulfores* of the Roman revenue in the time of the emperors; whose duty it was, to prevent any misapplication of the money collected by the Zemindar, and his agents dispersed over every part of the country. For with them only rested the whole business of letting the lands, keeping the subsidiary accounts, and collecting the rents from the villages and they were, in all ordinary matters, independent of the interference of the superior Government.

Increases were sometimes made upon the former year's revenue: not however, in consequence of any local scrutiny or valuation of the resources of any Zemindar: but by a rateable assessment, called months or 12th parts upon the former jummah, or standard rent. They were levied for various purposes; sometimes public, sometimes private; which it would be superfluous now to exemplify: and in course of time, these proportionable assessments were gradually consolidated into the established rent of the Zemindars, who cleared himself by a repartition upon the cultivators, and subordinate landholders.

In a very few years after the British administration had commenced, principle was assumed, that the state had a right to the entire produce of the land leaving to the Zemindars certain allotments called Nankar, which have been probably supposed to be infinitely more considerable than they were. In consequence, various investigations were made into the measurement of the land and village accounts, to the great vexation of the Zemindars; their districts were afterwards let in farm to the highest bidder, and they were totally excluded, unless where they preserved their power and possession by collusion with a nominal farmer: and in consideration of their exclusion, a pension was allotted to them in ready money; not, as far as I can find, by any fixed proportion to the amount of revenue yielded by their Zemindary, but probably according to personal favor, or supposed situation in respect of family, religious establishments, or other cicrumstances. In this I speak of the greater Zemindars: for to all the smaller ones, the allowance was fixed at one-tenth of the gross produce, which has always been the established rate in Behar. At present the Zemindars are generally, and been for some years past, restored to the possession of their lands.

After the English had acquired the Dewani of Bengal the fiscal administration of the country naturally engaged their best attention. Mr. Rouse says: "The same internal mode of administration was continued, and the landholders felt no material change. Even in 1769, when a local scrutiny into the lands was instituted, no idea was held out, that the Zemindaries were not hereditary. In the year 1773 the Bengal Government thought it right to ascertain the laws and usages of the country upon this important article so as to lay down an established rule in all cases, that might occur. For this purpose, they framed four questions in writing, which were proposed to certain distinguished natives who were thought qualified from their eminent situations and known experience, to furnish just and respectable solutions, I cannot describe their competency for this duty required of them, so well as in the words of Mr. Francis. He says, that from their offices in Bengal "they must be supposed to have a perfect knowledge of the laws and customs of Hindustan, and of the established policy of the Mahomedan government. The Roy Royan and Canongoes are competent judges of

the custom of the country, and of the usage of the former government. The Pundits are the expounders of the Hindu laws. Mahomed Reza Khan, Naib Subah of Bengal, is appealed to for the law of the Coran, and the policy of the Mogul conquerors; and Rajah Shitab Roy, Naib of Patna, proves the custom of Behar." We give the questions and answers below:

"Questions on the subject of the inheritance of Zemindaries, proposed by the President and Council of Bengal in the year 1773.

To the Nabob Mahomed Reza Khan, Naib Dewan and Naib Subahdar of the province Bengal;

Maha Rajah Shetab Roy, Naib Dewan of the province of Behar.

The Roy Royan, and Canongoes of the Khalifa;

And the Pundits or learned Brahmins, who were assembled at Calcutta by Mr. Hastings, and there employed in compiling the code of Hindoo laws translated by Mr. Halhed:—with their respective answers.

1st. Upon the death of a Zemindar, does the Zemindary belong to his son, or to the king, who may give it to whom he pleases? Can the son of a Zemindar of himself take possession, and enjoy the Zemindary; and is the king's Sunnud necessary or not?

2nd. When a Zemindar has no son, and only a daughter can she of herself take possession of the Zemindary or not?

3rd. In a zemindary there are two brothers. The elder had possession of the zemindary. Afterwards his descendants regularly for four generations enjoy the zemindary, and die without heirs; the younger brothers grandson's grandson is in being, though none of this line were before in possession. In this case, does the zemindary (agreeable to the Shaster,) come to him, or belong to the King, who may give it to whom he pleases?

4th. A zemindar dies—afterwards his descendants by some means, have not had possession of the zemindary. In this case after how many ganerations will the zemindary revert to the government?

Answer 2nd to Question 1st.—According to a received opinion of famous magistrates, a son is, after the father's death, proprietor of his estate, and can of himself take possession of his Zemindary; but if for the sake of establishing his credit, and to get his name enrolled in the records, he shall procure a Sunnud from the King, it will be of no signification, either one way or the other. Should a zemindar notwithstanding a real ability in his district, be backward in the payment of his rents; or appropriate them to his own use, or be guilty of oppression on the Ryots; the King, or the ruling Magistrate, may in that case appoint some one of his relations or should he not have any, a person not his relation may be appointed his gomastah or agent, to have the management of the revenues, and to preserve the contentments of the Ryots, provided the Nankar and established perquisites are at the same time paid to the Zemindar. But a Zemindar's inheritance cannot be transferred to another. Should he be guilty of any capital crime, such as murder or robbery, it will be the duty of the Magistrate to inflict upon him such punishment as is decreed in the Coran.

Answer 2nd to question 2nd.—In case of a Zemindar's having no son, a daughter is, according to the opinion of famous Magistrates, heir to his Zemindary; but should he have a son, and other heir, his daughter in that case is heir only to her own share, as is decreed in the Book of God. In case of the daughter's not paying her malguzary, the King or the ruling Magistrate has a right to appoint some one of her relations; or should she have none any other person, as her gomastah, or agent, to have the management

of the revenues in her behalf, paying to her at the same time, her Nankar and established perquisites.

Answer 2nd to Question 3rd.—According to the opinion of famous Magistrates, any one of the descendants of a younger brother, as far as his grandson's grandson has certainly a right to the Zemindary. In case of his not being able to discharge his Malguzary, the King, ruling Magistrate, has a right to appoint some one of his relations, if he has any, if not, any other person as his gomastah or agent, allowing him, at the same time his Nankar and established perquisites.

Answer 2nd to Question 4th.—According to the opinion of famous Magistrates the heirs of a Zemindar, even should they never have been in possession of the Zemindary after the Zemindar's death, have in reality still a right to it; but the King or ruling Magistrate may in order to serve a particular purpose of policy, either place one of them, or any other in the Zemindary, and receive the revenues from them, provided the heir of the Zemindar is allowed his established perquisites. But the Zemindary does not revert to Government.

REMARKS.

Zemindaries are of different kinds, some of them subsisted previous to the introduction of the Mahomedan religion, into this country, whose proprietors having acknowledged their subjection, and agreed to pay their rents to the Mahomedan Emperor, were accordingly continued in their possession:

A second kind is those which have been cleared of jungle and cultivated from a barren desert state, the Zemindars of which are called jungle Burs.

A third kind is those which have been purchased.

A fourth kind is those which have been granted as a free gift.

Besides the foregoing kinds, there is another kind called Sunnuddy Z mindaries of which are the following, viz.

The first is when the King grants to any person a certain quantity of waste jungly land, to be by him brought into a state of cultivation, after which he pays rent for it to Government.

A second kind is when the King or ruling Magistrate turns out a Zemindar without fault or reason, and gives a sunnud for it to another.

A third kind is when a Zemindar dies, and some person makes a representation to the King of his being dead without heirs, and obtain a Sunnud for his Zemindary, of which he keeps possession for some generations till at length the proper heirs appear.

A fourth kind is when a principal Zemindar arbitrarily usurps the possession of other small Zemindaries, and afterwards applies to the King or the ruling Magistrate for a Sunnud for the same, who grants him one in consideration of his paying a Nazerannah.

A fifth kind is, when a Zemindar dies without heirs, and the King for some time keeps his Zemindary khas, but at length grants it to another for a Nazerannah.

With the kinds of Zemindaries mentioned in the 1st, 2nd, 3rd, and 4th Articles of the above remarks, as well as in the 1st Article of Sunnudy zemindaries, the King has no further concern, than the receiving of his rents. Of those the Zemindar is the sole proprietor and master, and the degree of power which the King has secularly acquired over them has already been explained.

The zemindaries mentioned in the 2nd, 3rd, and 4th Articles are a kind of public offices.—Should an heir of the original proprietor step forth and assert his claim, it will then behove the King or his Naib, to restore him to his

right; but should there be no heir of the original proprietor remaining, it will then be in the king's own disposal.

The kind of zemindary mentioned in the 5th Article is no more than a temporary office liable to be given away to whomsoever the king pleases. But the principal duty of a King is the administration of justice; and both for the sake of stability in his dominions and inspiring his subjects with a confidence in his administration, whenever he gives a Sunnud to any person for a zemindary, either according to the spiritual or temporal laws, the longer he remains steadfast to his orders, the better. As the King is the Supreme Magistrate, a frequent reversal of his orders is destructive of all confidence, and a slight upon his own authority.

Answer from Maharaja Setab Roy.

Answer 1st. When a Zemindar dies his son succeeds to the Zemindary, according to the custom of the soubah of Behar, but the King is entitled to the revenue of it.—The great zemindars for the sake of the greater security, receive a Sunnud from the kings. The King never grants one, but to the lawful heir. In case this heir is not able to pay the revenue, he may sell the zemindary, which becomes the right of the buyer: but it is necessary, that he should receive a Sunnud.

Answer 2nd. A daughter can inherit the zemindary, provided her father bought it and put in possession with the testimony of his relations before his death. If the zemindary descended to him from his ancestors, it becomes the property of their descendants and not of his daughter. If there are no such descendants, it is then the right of the daughter.

Answer 3rd—If none of the eldest brother's line is living and the zemindary descended from the late zemindar's ancestors it is the right of the descendants of the younger brother. If the late Zemindar himself bought it and during his life time appointed no heir, it doubtless devolves to the King.

Answer 4th. In case after a Zemindar's death—his sons happened not to obtain possession of it; who then afterwards appear and claim it, and are ready to pay the revenue, the King's officers considering their hereditary right will give them possessions, even after some generations. The revenue belongs to the King but the land to the Zemindar.

Answer from the Roy Royan and Canongoes.

1st. After the death of the Zemindar, the Zemindary devolves to his son. Although the country belongs to the King, and he may indeed give it it is neither conformable to justice, nor to the custom of the country that he give it to others, in case the deceased Zemindar had left a son. The son has a right to take possession of his father's Zemindary, but it is usual for the son of a Zemindar, after his father's death, to repair to the precedence, and present a Nuzzar to the king, that a new Sunnud, may be made out in his name; for until he can produce a Sunnud, the Mutsuddees and other officers of the Sircar will not aknowledge him as zemindar; therefore it is necessary that he should procure a Sunnud.

2nd. A daughter does not succeed her father in the zemindary, during the life time of her mother, unless the father has expressly appointed her (in his Will) to be his heiress: but she takes possession before either her father's or brother's or brother's son. It is necessary, that she should obtain a Sunnud, which it is customary for the King to grant, she cannot of herself, take possession of the zemindary.

3rd. If the zemindar leave behind him two sons the descendants of the youngest, in case the family of the eldest is extinct, become entitled to the zemindary provided the last of the family of the eldest appointed them his

heir by will; otherwise the King may indeed grant it to them as a favor but is at liberty either to keep it himself, or to confer it on whomsoever he pleases.

4th. Dispossession is by many different ways. Should any Zemindar die during the minority of his son and none of his agents are of sufficient credit to repair to the King's presence, give security for the Malguzary, and obtain Sunnuds, and should any of the Zemindar's copartner, or any one else either by his intrigues at court have obtained a Sunnud and acquired possession of the zemindary or been invested in it by virtue of the King's authority, without any apparent fault on the part of the deceased zemindar's sons or in case those sons should die without ever having had possession of the zemindaries, and a grandson of the zemindars should claim the zemindary he will in those cases be entitled to it both by the laws of equity, and right of inheritance. Should the Zemindar's son have not been able to discharge the revenue or have otherwise offended against his Majesty, in that case it is his Majesty's prerogative to dispose of it to whomsoever he pleases. If after the Zemindar's decease none of his sons or grandsons should ever have been in possession of the zemindary, it in that case devolves to the King.

Answer from tha Pundit.

1st. Upon the death of a zemindar the ground belongs to his son as also all his other effects.

Whether or not King's Sunnud is necessary to put him in possession is not written in the Shasters.

2nd. Should this zemindar have neither son nor wife nor grandson nor great-grandson his daugther will enjoy the zemindary.

3rd. Descendants of the younger brothers according to the Shaster will succeed to the zemindary.

4th. While there remain any sons or other descendants or heirs the zemindary will not fall to the Government. When there are no heirs then it will fall.

(Signed) by

Banessur Shurmun.	Krishna Keshub Deb Shurmun.
Kirparam Shurmun.	Seetaram Deb Shurmun.

X.

We gave last week extracts from Mr. C. W. B. Rouse's book on landed property in Bengal to shew the antiquity and heredity of zemindari property in Bengal. It is true that at the latter end of Mahomedan rule the custom of confirming succession to zemindaries in the shape of sanad by the ruling power came into vogue, but that did not take away the individual rights of the zemindars. Mr. Rouse remarks:

"It seems to me to result indisputably from the deductions of history contained in the foregoing pages, that zemindars, as persons possessing land either in their own right, or by successive renovation of grant, are of a considerable, perhaps of high antiquity, but that the present Sunnud, upon which only their title to this land has generally been supposed to rest, is of comparatively modern institution. So that whether the Sunnud now in use commenced under the reign of Akber, or that of Aurungzebe; I trust I shall not be thought presumptuous in contending that the zemindary pro-

perty existed independent of the Sunnud, and was not at least not within any ascertainable period, created by it. However, although it did not create, the Sunnud may have confirmed the property. Judicial functions may have been superadded by it. After a recent conquest, it might be prudent for the conqueror, and safe for the proprietor to receive a charter of confirmation. Or the lands of persons who had been engaged in rebellion, having been sequestered and seized by the rightful, or what is in effect the same things, the successful party; which is the practice of all nations under every description, with more or less of ceremonial process: they might be added to the districts of some faithful adherent, and a charter would then become necessary to establish the new proprietor upon the exclusion of the former. Or it might be expedient in the case of acquisition by purchase, to confirm in like manner the possession of the purchaser.

In stating these cases hypothetically, I conceive, that I really describe by analogy, the occurrences of our own country, at those unhappy periods of our history when the contentions of the royal houses produced continual revolutions in the kingdom; and of all other nations under similar circumstances. Large tracts of land in England and Wales were so conveyed by charter from the successful competitor: and the titles of the present owners are deduced from them. The description will equally apply, with a change of terms only, to explain the origin, enlargement and consolidation of several of the great zemindaries of Bengal."

Again:

"Even the bold Barons of England, when they presented their claims to king John, which ended in the grant of *magna charta*; did not demand the privilege of disposing of their property to any persons whatever, without restraint or exception; but only "in favor of their relations, and their "daughters, sisters, and neices, to any body but who was the king's enemy." I do not see that any greater power is reserved by the Indian system, in the renovation of the zemindary grants."

"Even rebellion itself, which in our own country was constantly interpreted after the Norman conquest, to put an end to inheritance, was not applied with the same rigor, under the Mogul emperors. For when the old Zemindar was dispossessed, or even put to death for crimes against the state; or his zemindary escheated for want of heirs; the land was not taken by government, and given to tenants *in capit*, as they were called in England under the maxim introduced by king John, "that he held the land in right of his crown as it was originally derived from thence and consequently that the tenants of the former lord, instead of *intermediate* became *immediate* tenants of the crown." But the land, with its former divisions and I believe the same rent was granted to a new Zemindar with exactly the same tenure and jurisdiction as the preceding incumbent. The inferior proprietors and tenants of the zemindary passed over to the new Zemindar without any alterations; unlike those of an escheated English lordship who were thrown into much worse state by being considered as tenants *in capit*.

The paper above mentioned (No. IV.) will prove the truth of these observations. As to rebellion and crimes against the state see in the district of Burdwan:—the prince Azimul Shah who had been deputed by his grandfather Aurungzebe to suppress the rebellion headed by Kishen Ram the Zemindar of Burdwan actually restored his son Juggat Ram to the zemindary after the father had been killed in the troubles. So little was the family disgraced or incapacitated that other districts were added to its jurisdiction and Rajah Teeje Chund the present Zemindar of Burdwan and first in Bengal

is the descendant of that Juggat Ram. There are other instances which I need not particularize.

Then, as to the punishment of death, and the practice of purchase, look to the district of Nuddea; where the Zemindar Ramchund was put to death for revolting against the government; but his younger brother Ram Jewan was admitted to the zemindary. His eldest son the successor Raghoram greatly enlarged his possession by purchases which he made between the Bengali years, 1127 and 1134. or A D 1720 and 1727. And after holding his zemindary for nine years, was succeeded by his son Kishenchund; who added more purchases enjoyed the zemindary for the long period of fifty three years, and then resigned it to his son.

In Dinagepore, we see a regular descent first to a daughter's son; next to his son; then to three sons successively; neither of whom leaving any issue the youngest adopted a relation, who continued for forty years, and died in 1725-6. This line also failed; and the last of the family adopted a son, who is the present Zemindar."

"It can never be maintained, either from the histories or traditions of Bengal, or from the anecdotes of the several families who now possess the lands, that the zemindars have been ever displaced at the whim of the reigning prince, or his ministers, as is practised all the world over with regard to official nominations; nor that they needed confirmation at every succession of an emperor, or appointment of his provincial viceroy: nor that they have been liable to deprivation, except for crimes real or alleged, failure of revenue, rebellion, public robberies, or such acts of atrocity, as would even in free countries subject a person to attainder and outlawry. Since the British government has taken place, now twenty-five years, I believe no Zemindar has lost his inheritance, but for failure of revenue: or upon judicial process for private debt. With regard to preceding periods, I speak only as to the general practice. For in forming a government for our possessions, in India, we must not take as our precedents, the solitary examples of tyrants and usurpers: but where we find no written law should endeavor to make that *law* hereafter, which has been known as *usage* under the best of the native princes.

If we were to scrutinize the title of many capital estates in Great Britain, we should find they were originally granted for the performance of certain acts or offices; some of which have become ludicrous, others dropt into disuse and are forgotten. Would any one imagine upon reading without any of the concomitant circumstances of history a grant merely of the court of wards and liveries which although now indeed abolished subsisted in England till after the restoration of Charles the second; but that during that period landed property flowed from the indulgence of the crown? In like manner the English copyhold is even now said in his admission at the lord's court to hold his land *ad voluntatem domini.* Originally it was really so. But the possession is now as secure as that of the lord himself."

Mr. Rouse then quotes Mr. Holwell:

"Look also at the sentiments of Mr. Holwell, who passed thirty years in Bengal, during the several governments of Jaffer Khan. Shujah Khan, Serafraz Khan, Aliverdy Khan, Seraje-ul-Dowlah, and Mir Jaffer: including altogether, a period for about ten years antecedent to the invasion of Nadir Shah, which produced the defection of Bengal and other provinces to the establishment of the British influence consequent on the victories of Lord Clive, Major Adams, Sir Hector Munro and General Carnac. In recounting any of the Revolutions which had happened in the empire during that tumultuous series, he never hints, by any mode of expression, that the zemindars are the servants of govern-

ment, but calls them "the great proprietors of the land" and constantly speaks of them, as holding by an hereditary succession."

One more extract and we have done:

"I shall only add one further consideration, to establish the actual existence of landed property under the ancient government of Bengal. But it strikes me to be one of that transcedent force, that if due regard be had to the parties, circumstances, and time; it must even alone, and unsupported by any other argument, carry complete conviction. It is the conjunct testimony of the Mogul emperor himself, and the East India Company:—the one, before any visible declension had taken place of the imperial authority; the other, humbly supplicating protection and security for its commerce, upon any terms the sovereign might think proper to impose.

About the year 1696, during the reign of Aurungzebe, several of the hereditary landholders, headed by the Rajah of Burdwan, declared themselves independent of the Mogul's government of Bengal; and the European nations took advantage of this state of confusion to fortify their several settlements, the English in the year 1698, obtained from Sultan Azim ul Shah, grandson of the emperor, who was deputed to suppress the rebellion, permission to purchase from the hereditary landholders, the zemindary rights of three villages round Calcutta to the extent of about one mile and a half square. But they had afterwards the misfortune to incur the displeasure of Jaffer Khan, the Subahdar of Bengal; so that, being exposed to frequent interruptions in their business from the officers of the Mogul government, and sensible of the precarious tenure of their establishments, they determined on sending a deputation to the Court of Delhi in the year 1715, to represent their grievances to Furruksere, who then sat upon the throne of Hindoostan.

Much time was spent by the deputies in solicitation and intrigue. They petitioned, amongst other articles, for a confirmation of the three villages formerly bought by the Company, and for a grant of the Talookdary of thirty eight other villages which lay contiguous to their factory in Bengal, subject to a fixed revenue of rupees 81,816 or about 1000*l.* per annum. which paid a revenue of about 160*l.* per annum. The imperial court at length became favorable to the representations of the deputies. But what course did it take? Did the emperor assign over a body of his subjects to the English Company, as a drove of cattle, that belonged to him, and lay at his mercy? Did he give them the villages they solicited, as a paltry scrap of his own immense landed property in the manner we should give any neighbour a yard or two of land, to build his wall upon?—by no means. With the dignity of a just monarch, he granted them, unconditionally, a confirmation of three villages they had actually bought, and conferred upon them the Talookdary of the thirty-eight villages, with an express reservation in his firman or charter, dated in 1717, of the rights of the proprietors from whom the Company was positively required to purchase them before the investiture should be admitted by the provincial government.

The sense then entertained of the grant is clearly fixed by the bold translation made at the time, and probably by Cojah Serliad himself, one of the deputies, which expresses it thus; the thirty [eight] towns I give you the Zemindary of likewise, but you must buy them and satisfy the owner; the Duan Subah will not impede you." It shows likewise, from the substitution of the word *Zemindary* for *Tulookdary*; which is in the original, that they were then considered as equivalent. This requisition is enforced in the order to the imperial officers of Bengal issued by the prime minister Syed Abdulah Khan, which announces the grant of the lands to the Company—"If, according to former customs they buy them by the assent of the respective owners of them,

then you are to give permission." It is again repeated in other terms, at the head of the schedule, which enumerates "the towns (or villages) to be taken from their several Pergunnahs, and united into one Pergunnah." The condition, neverthless, was not performed. The fact is, that the Subahdar Jaffer Khan deterred the holders of the land with secret threats of vengeance from parting with their ground on any terms: and a Perwannah issued by Sefraz Khan, then Dewan of Bengal. In the 9th of Mahomed Shah (about 1729) which refers to the charter of Furruksere, says, the three towns formerly granted them, and bought by consent from the zemindars of them, are now in their possession—and "the other thirty-eight towns, they have not yet bought; neither are in their possession."

Here we have the united testimony of the Mogul Government and the East India Company to the proprietary title of the Zemindar. We will conclude this part of the subject with the following pertinent remarks of Mr. Rouse:

"In drawing a parallel out of Germany for the execrable doctrines of despotism, I discover with the greater satisfaction a parallel in the same empire for the rise of hereditary possessions and honors. If it be contended, that the zemindars have no right of property in the land, nor hereditary claims of any sort, on the idea that they were originally nothing more than superintendents of districts, or collectors of the revenue, without any condition of permanency in their nomination; which in the course of centuries has probably been the case of many: it might possibly be deemed a sufficient answer to that suggestion, to show, that most of the principalities of the German empire had a similar commencement; that the dukes, margraves, and counts were at first mere governors of cantons employed during the king's pleasure and dependent on the crown; but being continued from father to son, it became difficult to establish a contrary system. Thus originated the hereditary right now enjoyed by the counts and the present Palatine, Saxon, and Brandenburg Houses trace their descent from the ancient Counts of Wittelsbach, Wettin, and Zollern."

As to the position of tenant under the old Zemindari system Mr. Rouse remarks:

"As to the mode, privileges, or conditions of the real tenants not taking the term according to the use of it in the English law of tenures, which supposes all property to be *holden* of some superior or lord: but in the more limited and ordinary acceptation of renters, farmers and cultivators: my inquiries have led me to think they are various according to the settled usage of any district or village or according to the agreements made either for a term of years or upon a lease running from year to year for a fixed average rent or a particular rent upon each harvest; and in short under a diversity of titles and descriptions which it would be tiresome to particularize; but with no positive right that I could ever ascertain of keeping the land against the will and approbation of the immediate superior who holds the permanent possession of the property. Whether any continuance of usage may have been converted into a right as in the town of Calcutta I cannot positively say. It is not general nor is it to be wished. Prudence may dictate the custom of not changing the tenants, but would not I think prescribe the law."

It will be seen from the above that the zemindar was the absolute master of the land and that he could do with it what he might think fit.

Mr. Rouse, whom we have quoted at length, says in the dedication of his book to Mr. Henry Dundas: "When His Majesty's Board of

Commissioners for the Affairs of India first entered upon the duties committed to them by the Act passed in 1784, it is certain, that no subject received a more earnest attention than the condition and tenure of the landholders throughout our territorial possessions: and, as I have the honor of attending all the deliberations and researches, previous to the system they have since established for the administration of the revenue; I cannot present this review of the subject so properly to any one as to you, who have always taken a very active part in the proceedings of the Board; and to whom the country looks with confidence for a zealous and vigilant attention to every object, that may affect the prosperity of its Asiatic interests." Mr. Rouse thus wrote from personal knowledge and not from hearsay

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XI.

WE have already discussed the rights which the Permanent Settlement Regulations and subsequent laws conferred upon both landholders and ryots. In the second decade of this century a strong current set in in favour of ryot rights, which flowed on till the third decade when Mr. J. H. Harrington actually proposed a Regulation, the object of which was "*to secure consistent decisions as to the rights of the ryots.*" It was entitled a Regulation for "maintaining the ryots of *khoodkhast chupperbund* and other resident ryots who by prescriptive usage are entitled, on certain conditions, to the permanent occupancy of the lands cultivated by them, within the limits of the village in which they reside." This Regulation was not passed into law; it was simply an intellectual exercise on the part of its learned author, but it was circulated among high officers for opinion, and was dropped because it was generally condemned. Nevertheless it may be interesting to the reader to know what was the scope and meaning of the proposed law. It was intended as a declaratory law. Section II. of this Regulation was as follows:

"It is hereby explained and declared, that in recognising the hereditary and transferable right of zemindars, independent talookdars, and other actual proprietors of malgoozaree lands, in their respective zemindaries, talooks, or other estates as specified in the Regulations of 1793, for the provinces of Bengal, Behar and Orissa, and in the Regulations of 1795 for the province of Benares, it was not intended to abrogate or abridge in any degree the prescriptive rights and privileges of dependent talookdars, village zemindars, hereditary and permanent ryots, or any other description of under-tenants, or cultivators of the soil of whatever denomination; on the contrary, it was always the intention of Government, and it is now expressly enacted for the guidance of the courts of judicature and other public authorities, that dependent talookdars and other under-tenants possessing an hereditable and transferable property in the tenures held by them respectively, as well as khoodkasht, chupperbund, and other resident ryots who cultivate lands within the limits of the village in which they reside, and are entitled by prescription to a permanent heritable right of occupancy, subject to the payment of a specific rate, or a rent ascertainable by the rates of the pergunnah or other known rules of adjustment, shall be maintained

and secured in the possession and enjoyment of their respective tenures, with all rights and privileges apertaining thereto, in the fullest extent to which they may be entitled, whether by written deeds and engagements or by the established usage of the country, or by the provisions of the laws and regulations in force. In all such cases the sudder malgoozar, whether a zemindar, independent talookdar, or other description of superior land-holder, paying Revenue to Government, must be considered to possess only a restricted property and interest with respect to the lands occupied by permanent under-tenants, such as those above mentioned. and his rights and privileges in such cases must be determined with due regard to the nature and conditions of the subordinate tenures included within the limits of his zemindary or other estate."

We do not allow that this section correctly represented the then existing law on the subject, but admitting for argument's sake the extreme view which Mr. Harrington took we observe that he made a broad distinction between *khoodkasht* or resident ryots 'entitled by prescription to a permanent heritable right of occupancy" and ryots of yesterday without any such right. The occupancy ryot of twelve years had then no existence, far less the occupancy ryot of three years' standing, and yet the majority of the Rent Commission contend that in creating the ryot rights recognized in the Bill proposed by them, they are simply restoring the old Regulations. It will be also observed that the *khoodkhast* or resident ryots of the old Regulations had no *transferable* right. The next important provision in Mr. Harrington's declaratory Regulation was as follows:

"The intention of the existing rules relative to the process to be followed by zemindars and other sudder malgoozars desirous of enhancing the rents of their under-tenants, was as follows: viz. that any such sudder malgoozar if legally entitled to enhance the rent of an under-tenant, might secure his right to do so on account of the ensuing fusily or current Bengal year, by serving on him a written notice, as prescribed in sections 9 and 10, Regulation V., 1812, previous to the time of cultivation; and that after such notice, the sudder malgoozar might distrain for any enhanced rent which he might be entitled to demand. But it was not intended that the prescribed notification should, of itself confer any title to enhance the existing rent, or to enforce a demand of enhanced rent when not specifically engaged for, or otherwise justly demandable.

2nd. It is now further enacted, that in cases in which a zemindar or other sudder malgoozar, or any person in his behalf. or in behalf of any intermediate landholder or farmer of land, shall proceed by distraint against a ryot or other under-tenant, for a higher rent than was payable by him for the same land in the preceding year, and such higher rent may not have been specifically engaged for by the under-tenant, and the justness of the demand for it may be denied by him, the said undertenant shall, on paying the amount of rent demandable from him at the rate of the preceding year, be entitled to have the property released from distraint, and the zemindar or other malgoozar shall not be entitled to recover the enhanced rent demanded by him, without proof of his title thereto, by a regular or summary suit to be instituted by him in the proper local courts. Provided, however, that if on investigation the amount claimed be found justly demandable, and the written notice prescribed in section 9 Regulation V., 1812, shall have been duly served at the season cultivation, judgment shall be given in favor of the plaintiff for the amount due with full costs of suit, and interest at the rate of twelve per cent. per annum from the date on which the rent in arrear was payable, provided also, that if it be proved

in such cases, either that the claim of the zemindar or other malgoozar to enhance the rent was unfounded, or that he proceeded to enforce his title to such enhancement without due notice being given at or before the cultivation, his suit shall be dismissed with full costs, and with damages for any excess levied, as provided for by section 10 Regulation V. 1812.

3rd. The rules contained in the preceding clauses of this section, which respect the zemindars and other sudder malgoozar, shall be held equally applicable to mofussil talookdars putnee talookdars, ijardars, kutkinadars, and other middlemen, in their transactions with the cultivators of the soil or other under-tenants of land, 1st. The fifth clause of section 18, regulation VIII 1879 (which was first enacted for the province of Bengal and the district of Midnapore, but has been extended to all the provinces under the Presidency by section 22, Regulation VII. 1822) contains the following provisions respecting khoodkasht ryots or other resident cultivators of the soil: "For any arrears which may be alleged to be due from those classes of persons the party claiming them may proceed at any time during the year by distraint or by process of arrest and summary suit under the existing rules. Proprietors, talookdars, or farmers, however, to whom an arrear of rent may be due at the end of the year from any khoodkasht ryot or other resident cultivator of the soil, are at liberty to institute a summary suit to establish the existence of such an arrear, taking out process of arrest in the usual form. If the defendant shall not attend or cannot be arrested, the forms of process and proceeding prescribed in the third clause of this section, shall be considered to be applicable to the case, and any summary judgment previously obtained on account of rent of the year just closed, shall be received as evidence of such arrear, upon the plaintiffs showing that the judgment in question has remained unexecuted. If an arrear shall be adjudged by the court to be due, and the amount shall not be immediately paid into Court, the plaintiff shall be authorised by the court to make such new arrangement as he may judge proper for the future management of the lands in question."

4th. The summary judgment referred to in the above clause is of course, as in the other cases of a summary decision, subsidiary to a regular suit in the civil court. It is further hereby provided, in modification of the latter part of the clause above cited, that whenever an arrear of rent may be adjudged in a summary investigation against a khoodkasht, chupperbund or other resident cultivator entitled to a permanent right of occupancy, whilst he performs the condition of his tenure, he shall be allowed one month from the date on which the summary judgment may be passed, either to satisfy the same, or if dissatisfied with the summary award, to institute a regular suit in the civil court for a further trial of the merits of the case; and in the event of his instituting a regular suit within the time limited, and of his giving security to make good the amount that may be ultimately adjudged against him, with interest at the rate of one per cent. per mensem, he shall not be ejected from his tenure whilst such regular suit is depending. Provided further, that if the ryot against whom the summary judgment may have been passed in any such instance, shall not be able to give the requisite security, and shall consequently be ejected from possession of his tenure by the landholder to whom his rent is payable, or any person in his behalf, and he shall, by the institution of a regular suit within six months after such ejectment, obtain a reversal of the summary decision, and establish to the satisfaction of the court that he was not at the time of ejectment, justly liable to a forfeiture of his tenure, he shall be entitled to a judgment for immediate restoration thereto, together with full costs and damages."

It will be seen from the above that besides distraint and personal arrest eviction followed default after decree of court. This occurred as

a matter of course. No special order of court was deemed necessary, and no objection was taken to this power of the landlord by the stoutest champion of ryot rights in former days. There were of course provisions against the abuse of the power of ejectment, but the power existed, and its equitableness was not questioned.

As regards the adjustment and enhancement of rent the following provisions were proposed:

1st. In all suits, regular and summary, wherein the court of judicature, collectors, or other public officers may be authorised to adjust and determine the rents payable by ryots or other under-tenants of land as well as in all other cases whatever in which the officers of Government may be empowered by the Regulation in force, or by the special orders of the Governor-General in Council, to adjust the rents payable by the cultivators and under-tenants of land, especially by such as possess a permanent right of occupancy in their respective tenures, subject to a fixed rent, or a rent determinable by the rate of the pergunnah, or other known rule of adjustment, they shall be guided by the principles declared in this Regulation, as far as may be applicable to the case.

2nd. Provided that in all cases wherein voluntary and lawfully written engagements may have been entered into between the parties or their representatives, such engagement shall be maintained and enforced, with the exception of any prohibited items of *abwab muthote*, or other denomination declared null and void by section 3, Regulation V. 1812, or by any other Regulation in force.

3rd. Provided also, that no istemrerdar or tenant at a fixed rent who having held his tenure at fixed rent for a period of more than twelve years, was exempted from any increase of assessment by the rules of the permanent settlement of Bengal, Behar and Orissa, shall be liable to an enhanced rent for lands included in the same time, whether the rent paid by him be more or less than the ordinary rate of rent for similar lands in the same village, pergunnah, or other local division, and whether the zemindary talook, or other estate comprising such istemrary under-tenure shall have been disposed of by public sale for arrears of Revenue or not. Moreover, istemrary jotes, or tenures at a fixed rent of whatever denomination, which may have been actually held at a fixed and invariable rent for a period of more than twelve years subsequent to the permanent settlement, in any of the provinces to which this Regulation is applicable, shall not be liable to any enhancement of the fixed rent so paid, without proof that the tenure was obtained from a person not competent to grant the same, or that the rent was fixed without due consideration, such as the cultivation of waste land, or for other good and sufficient reason much below the ordinary rate of rent for land of a similar description in the same village or pergunnah.

4th. When an under-tenant may not be entitled to hold his tenure at a fixed rent under the preceding clause, but may possess a permanent right of occupancy at the established rate of the pergunnah or other local division for similar tenures or lands of a similar description, and such pergunnah or established rate may be ascertainable and found to have been actually used as a standard of assessment in past years, the rent of the under tenant shall be adjusted accordingly in pursuance of the rule prescribed in the section 6, Regulation V. 1812, subject, however, to the following modifications.

1. If the tenure be hereditary (as the tenures of Khoodkasht and Chupperbund ryots antecedent to the permanent settlement of the Land Revenue are understood to have been), and was derived by the present occupant from a person or persons who had possession of it at the commencement of the perma-

nent settlement ; and it shall appear that the pergunnah or other local rates of rent applicable to such tenure, have been considerably enhanced during the period of the settlement referred to, in opposition to the principles declared in the preamble to this Regulation, it shall be competent to the Court, Collector, or other public officer authorised to determine the rent justly demandable from the tenant in such cases to revise the pergunnah or other local rates of assessment and to reduce the same with respect to the hereditary tenures abovementioned, so far as may appear equitable, and consistent with the provisions of this Regulation.

2. It shall likewise be competent to the Court, Collector or other authorised public officer, to exercise a similar discretion in the applying the pergunnah or other local rates of assessment to the tenures of khoodkasht chupperbund ryots or other permanent under-tenants of land, when tenants may have been obtained since the formation of the permanent settlements of the Land Revenue, if it be found on enquiry that such pergunnah or other rates have been much enhanced since the tenure was granted, without good and sufficient reason for such enhancement, and without any special agreement or condition in the pottah or other title deed of the tenure which may appear to justify such increase of rent.

When no established pergunnah or other local rate may be ascertainable or found to have been actually used as a standard of assessment in past years, the rule prescribed in section 7 of Regulation V. 1812 shall be held applicable, with the following modification. In applying that rule to hereditary tenures, which may have been derived by the present occupants from persons who possessed the same at the commencement of the permanent settlement of the Land Revenue, due regard shall be paid to the principles declared in the preamble to this Regulation ; and with respect to all tenures of a permanent nature which have been granted since the formation of the permanent settlement, if strict application of the rule contained in the section above mentioned would produce a considerable enhancement of the rent which was payable when the tenure was granted, without good and sufficient reason, and without any specifiic agreement to warrant the same, it shall be competent to the Court, Collector, or authorised public officer to adjust an equitable rent according to the ascertained or computed produce of the land and so as in all cases to leave to the tenant a fair and reasonable profit, after providing for the wages of labour and every other expense of cultivation, with due attention to the usual contingencies of season and other casualties, and to any charges beyond the rent payable to the landlord which, according to established usage, may be justly demandable from the tenant, and may be perfectly consistent with the laws and Regulations in force.

At the time this Regulation had been drafted the *pergunnah nirikh* had already become a thing of the past. Accordingly Mr. Harrington proposed a fair and equitable rate of rent in the absence of the established pergunna rate. This was to be fixed according to the ascertained or estimated produce of the land, after deducting all out-goings for cultivation and seasonal disadvantages. Practically it was to be a reasonable rate of rent at the discretion of the zemindar, modified in case of dispute by decree of court. The court's discretion was limited by the conditions on which the determination of rent was to be regulated.

Such was the law proposed by Mr. Harrington in 1827 for the protection of the rights of ryots. It was by no means a measure of confiscation. And yet the Government of the day would not seal it

with its sanction. The Judges of the Sudder Court most strongly condemned it. But in imitation of Mr. Harrington the Rent Commission have proposed a measure, which is most revolutionary in its scope and tendency, aye, little short of spoliation. It remains to be seen what action the Government of the present day will take in this important matter.

XII.

BEFORE we proceed to discuss further the report of the Rent-Law Commission we propose to take a rapid survey of the systems of landed tenures prevalent in the different countries of Europe. In 1869 Her Majesty's Government issued a circular to the British Consuls in those countries calling for the fullest information in regard to the laws and customs affecting the tenure of land in the several countries of Europe, with the view of ascertaining what points there may be in such laws and customs that could be usefully adopted in the settlement of the land question in Ireland. The report of the Consuls is given in the shape of a Parliamentary return, which we may say is a mine of information on the subject. We will take the different countries *seriatim.*

SAXE COBURG GOTHA.

By far the greater portion of the land in this country is owned by small proprietors. Generally tenants exist on larger properties, belonging to the Ducal House, to the Church and Rectories, and to towns. Sub-tenures under intermediate tenants scarcely exist. The duration of a tenure is from twelve to eighteen years. If the tenant dies during this time, and one of the heirs is willing and capable of undertaking the tenure, he is considered to have a claim to it, at least, as long as until the term expire. All cattle, implements, &c., are mostly the property of the tenant. He must give security for the punctual observance of the agreement. Sub-tenancies require the consent of the landlord. Tenancies are created by written agreement. There exists no law as regards the duration of the lease where there is no agreement, neither as to leases being registered. No law or custom exists whereby a tenant is considered as having a right to remain in occupation, so long as he punctually pays the stipulated rent. It is the custom for a landlord to announce publicly that a farm is to be let, and a day is fixed for receiving the different offers. He can by this means become better acquainted with the character and circumstances of each bidder before he makes his choice. Neither law nor custom permits the sale of a lease without the knowledge of the landlord.

Rent is usually paid in money, with security. It is seldom that security consists in *natura,* and even then, as an exception, only as regards a small part of it. A division of the harvest never takes place. Rent is regulated by competition, sometimes by direct intercourse between landlord and tenart. Rent is paid quarterly, and punctually. The agreement having been made for a certain time, the landlord has no right to raise the rent before its expiration. The landlord generally

reserves in the contract, in the following cases, the right to evict a tenant, viz:—when the rent is not paid within a year; when the tenant becomes a bankrupt; when he is convicted and sentenced to a degrading punishment; when he does not fulfil the conditions of the contract, and thereby deteriorates the farm. There are no legal means by which the respective rights of proprietors and tenants for the recovery of rents and other claims can be enforced, neither does any law confer on the landlord any exceptional privilege over other creditors. The landholder can only evict the tenant from his farm by law, and then only when the suit has terminated in favour of the former. An agreement cannot be annulled before the term of the lease expires unless the tenant neglects to observe some condition stipulated in the lease. When the lease is out the tenant must go. If a tenant neglects to pay rent for two years, the legal authorities will not permit him to remain in order to redeem. It is seldom that steps are taken by landlords for the removal of tenants. There is no law respecting the improvements which the tenant has made on the property. It is customary to have it specified in the contract that the tenant should renounce all claims for improvements. This is the step taken in order to avoid groundless and exaggerated claims and consequent disputes. The relations between landowners and tenants, who always belong to the best class of farmers, are with few exceptions very good and friendly. The tenants are protected by the general laws. Particular laws are unnecessary and do not therefore exist. The tenants, in comparison with the small proprietors are much better educated in every way, They are also industrious and intelligent. They have generally been bred up in better classes.

GREECE.

The land is partly held by small proprietors, who carry on cultivation themselves, and partly by tenants. Barely one-seventh of the whole superficies of the Kingdom is actually under cultivation, though, notwithstanding its mountainous regions, it is peculiarly adapted for an agricultural country as it contains large plains the soil of which is extremely fertile. During the domination of the Turks but few Christians possessed landed property—all the best lands having been appropriated by the ruling race. After the Greeks had achieved their independence all the Turkish estates in the Morea, and in some other provinces, were confiscated and became the property of the new State; but in Attica, Eubœa, Phthiolis, and in general in the provinces which the Turks were subsequently compelled by Treaty to evacuate, they were permitted to sell to Christians all their private properties. These were bought up at exceedingly low prices, and it thus happens that in the latter provinces there are large landed proprietors, and then the peasants who during the Ottoman rule cultivated the lands belonging to Turkish proprietors are now, in a worse position than before, for they have merely exchanged wealthy, and generally speaking, liberal for needy and exacting landholders for whom they are obliged to work on precisely the same terms as formerly. The quantity of land held by each tenant is about 60 stremas or 15 acres. The agreement entered into between landlords and tenants under the system in force

in Greece, the leading incidents of which have already been described, is of the nature of a deed of partnership, liable to be dissolved at any moment by either of the parties to it. In return for usufruct of the land, which the tenant undertakes to cultivate under certain stipulated conditions the landlord receives a certain fixed share of the produce; sub-tenancies do not exist, but could not in any case be assigned by the tenant unless with the consent of the landlord. The tenancy is sometimes created by parole, but in most instances by a written agreement passed before a public notary, who retains the original document in his possession and only furnishes the parties concerned with copies of it. When there is no agreement the law, founded on custom, presumes the tenancy to be from year to year, expiring when the crops have all been gathered in; that is to say, in the month of August, unless exceptional circumstances can be adduced by the landlord to justify a departure from the recognized practice, though in theory the tenant is merely a tenant-at-will. There is no law where under-tenants are entitled to retain possession of their respective holdings merely on regular payment of the stipulated amount of rent. There is likewise no law where under-tenants are considered as having a right to sell their interest in their farms without the consent of the landlords. In the case of tenancies the payment is made to the proprietor by a fixed share of the produce. The proprietors of currant vineyards, besides being reimbursed the amount of any advances they may have had to make to the tenants to enable them to meet the expenses of cultivation, receive one-half or two-fifths of the gross produce. When the proprietors of arable lands furnish the seed and the oxen required for ploughing, one-tenth of the produce is first deducted to meet the taxes, (the tithe amounts to 8, and the local imposts to 2 per cent,) and they then receive from the tenants one-half of the remainder, besides the quantity they may have supplied as seed. When the proprietors merely provide the land, they receive, according to its quality, from 10 to 20 and sometimes as much as 25 per cent. of the produce, after the amount due as taxes has been deducted. The average is, however, 15 per cent. which is the amount paid by tenants on all Government lands. At the time the crops are gathered the amount to be deducted therefrom as rent and taxes has to be levied on the spot by the proprietors or their agents before the tenants can dispose of any part of them. Any infraction of his ancient and universally recognised custom exposes the tenants to a heavy penalty. In the total absence of competition for land it is not the interest of landlords to change their tenants, and the rent is calculated on such a scale that any attempt to raise it would in most cases, lead to the loss of the tenants. The duty of enforcing the respective rights of proprietors and tenants, founded to a greater extent on local usage than on law, rests with the regular Courts; but the administration of justice is extremely imperfect, and the decisions of the Courts are often evaded.

The landlords are by law and custom in the position of privileged creditors the full amount of their claims on the produce of the land having to be satisfied before any part of it can be disposed of for the benefit of other private creditors. The landlord has an unlimited power of raising the rent and of eviction in case of non-payment of the same,

or for breach of contract. The legal means of procedure, by which the respective rights of proprietor and tenant are enforced, are through the Ordinary Courts of Justice or tribunals. When the rent is payable to the landlord in produce, he has exceptional privilege over the creditors for his share of the crop. The landlord demands a sentence in his favor, from the Court of the First Instance, requiring the property to be delivered up to him, under the penalty of a fine, enforced by the officers of justice. The time occupied in obtaining a sentence would vary according to circumstances. A litigious tenant, assisted by a clever lawyer, would probably be able to resist eviction for a considerable period. A sentence once obtained, can, however, be executed immediately notwithstanding appeal. Evictions are not frequent. The landlord, upon resuming possession, has a legal right to the improvements made upon the farm by the tenant. Therefore the latter, unless secured by some special agreement, can have no claim to be indemnified for any improvements he may have executed. However, when trees or vines, have been planted on the farm by the tenants, he has, strictly speaking, on giving up possession, the right to destroy any such plantation unless he can obtain fair compensation either from the landlord or from the incoming tenant. The relations between landlords and tenants are said to be in general of a friendly kind. Owing to the great difficulty experienced in most parts of the country in finding peasants to cultivate the land, the proprietors, as a class, are practically at the mercy of their tenants, for whose protection, therefore, no legislative interference has hitherto been found necessary.

XIII.

We continue our review of the landed systems in Europe.

Belgium.

Since the French Revolution feudal rights have ceased to exist in Belgium, and no tenure resembling the English copyhold system exists there. The law of equal division of property prevails in Belgium. The principles of the division of property as settled by law are as follows:—Equality amongst all legal heirs called to take part in the succession, and which they have accepted (heirs to a property must accept all debts thereon, and thus have the right to refuse to accept the property, except "sons benefice d'inventure, which means, they are only responsible to pay the debts to the extent of the property allowing them to do so.) The principle of equality is carried to such an extent that an heir must restore to the estate anything he may have received by deed of gift either directly or indirectly. Real and personal estates are alike divided equally. When real property cannot conveniently be divided, it is sold and the proceeds divided amongst the heirs; but a sale must only be resorted to if division of a property is almost impossible ("lorsque le partage en nature n'est pas comode"). The object of this is to prevent the accumulation of landed property. This system was introduced into Belgium at the time of the French revolution. Small holding is the

rule in Belgium, It is stated that out of every hundred farmers, 43·24 per cent. cultivate less than 50 acres, 12·30 per cent. less than 1 hectare, and 28·99 per cent. land not exceeding 5 hectares; that 7·47 per cent. cultivate between 5 and 10 hectares; and that the number of persons cultivating more than 10 hectares, is only 8 per cent. There is no law or custom whereunder a tenant is considered as having a right to remain in occupation of his holding even as long as he punctually pays his stipulated rent; as soon as the lease is expired, nothing can oblige the proprietor to continue the tenant. The lease having expired, the lessor can force the farmer to quit the farm. If the tenant has expended money on matters which are quite indispensable, such as mending the roof of a barn, he can claim reimbursement of his expenses; if on matters which are not indispensable, but only useful, or done for pleasure, without the landlord's consent (buildings, draining, manure), which remain in whole or in part attached to the soil, the respective rights of the parties are regulated by their agreement. In the absence of an agreement the owner is not bound to pay any indemnity; but the tenant has the right if he can to carry away with him all the improvements he has made, on the condition of restoring the land to the owner in the same state in which he received it; if the improvements are attached to the soil ("and fonds") the owner may prevent them being taken away on paying for them to the tenant. The tenant has no right, however, to remain on the farm after the expiration of the lease pending payment by the landlord for his improvement, and for the amount of which he is only a "simple contract" creditor, having his recourse before the ordinary tribunals of the country. Rent is agreed upon between the proprietor and tenant. At the expiration of a lease the proprietor treats with whom he pleases, the tenant likewise. Farms are generally let by private contract, certain public establishments, however, hospitals (hospices,) for instance possessing lands, let them by public competition, and a lease is granted to the highest bidder provided he furnishes the necessary guarantees as to solvency, &c. Rent is not regulated either by custom or valuation,—rents are generally paid annually at the expiration of the year, which was according to old leases, generally considered to expire on the 30th November, latterly, however, leases are considered to commence and conclude after the gathering in of the first crop about the 15th September. According to law, in the event of a dispute arising between landlord and tenant as to the amount of rent to be paid after the tenant has entered upon a farm on parol agreement, the proprietor is believed upon his oath, and if the tenant wishes he can call in valuers to value the rent, in which case the tenant, if the valuation exceeds the amount he has declared, must pay the expense of the valuation. This is the only case in which the amount of rent is decided by valuation. A landlord, in endeavouring to let his farm, is at liberty to ask any rent he pleases; he can evict a tenant in case of non-payment of rent, or for any breach or infraction of covenant. According to the terms of article 20 of the law of 16th December, 1851, in the event of non-payment of rent where there is a valid lease duly registered, the landlord has a prior claim over all other creditors. He may seize all live and dead stock, even though removed from the farm and maintain

a privilege over them for a space of forty days. The landlord, in order to exercise his privilege, has recourse to the procedure known as "saisee gagerie," which is regulated by article 819, and the following articles of the Code Civil. This procedure is most expeditious. If the rent is in arrear even for an hour, the proprietor can serve a notice upon his tenant through the "huissier" (an officer recognized by the Court for this purpose); twenty-four hours after the serving of this notice he may seize all the effects and crops in the building and on the land. If the rent for the whole duration of the lease does not exceed 200 francs(8*l.*) the tenant is summoned before the "Judge de Paix;" if, on the other hand, it exceeds that sum he must appear before the "President du Tribunals." The person summoned must usually appear before the Court one day after having received the notice. In the event of a demand for eviction for non-payment of rent being made the authorities above-mentioned often endeavour to obtain a short delay for the tenant, and if the tenant appears in Court with the sum necessary to cover the amount of the rent due, permission to evict is never accorded. Eviction having been pronounced, the farmer must leave generally within 8 or 15 days. Demands for eviction are, as a rule, rare. The tenant knowing that he must quit at the expiration of his lease, does not expose himself to legal expenses, and rents, as a rule, are regularly paid. Landlords are, moreover, not very exacting as to their payment precisely on the day appointed.

ITALY.

The land is principally occupied by tenants under proprietors, to a far less extent by small proprietors, and still less by sub-tenants under intermediate tenants; the relative proportions of these different systems cannot be ascertained, but there can be no doubt the main occupation is by tenants under proprietors.

Tenure.—1. Varies greatly—from 2 to 200 and 300, and even occasionally to 1,000 acres. 2. Almost always by written agreement. Duration 4 to 6, very rarely 8 years. In small holdings the principal conditions in the lease bind the tenant to cultivate carefully and properly, to pay the rent at the stipulated periods, to give up the arable land in the same condition in which he received it, to replace the trees which may die or be blown down, to cut none without the permission of the proprietor. The number of fruit trees and vines is counted, and recorded in the lease, if found deficient at the termination of the lease the tenant pays for those missing— if more, the landlord pays for them. In the case of large farms the landlord generally stocks the farm, supplies farming implements and cattle, seed and manure to the in-coming tenant, who enters on possession without investing a farthing of capital, but, on the other hand, is bound to give security either by mortgage on property of his own, or by guarantee of some thoroughly responsible party as well for the value of the whole of the stock as for the rent, during the period of his tenancy, and that he will give back stock equal in value to what he received. Sub-tenancies are assignable by the tenant, unless specially forbidden in the lease, but they usually are forbidden. There is no law or custom under which a tenant is considered as having a right to remain in occupation after the termination of his

lease, whether he may be willing to continue paying the covenanted rent or not. There is no law or custom under which a tenant is considered as having a right to sell his interest in his farm to any one—either with or without the consent of the landlord—such a thing is unknown.

Rent.—In most cases, payment to proprietors is made by a fixed amount of money, rarely in kind; in still more rare cases, the Mezzadia or Colonia, as in Lombardy, exists in these provinces, when the landlord gives the land and certain implements, the tenant finds the labour, and the produce is divided between them in a ratio fixed in the agreement. As regards property belonging to minors, the amount of rent is settled by public auction; in all other cases it is a matter of perfectly free arrangement and agreement between the parties, there is no law or custom which fetters the landlord as to the amount of rent he may ask, and he naturally makes the best bargain he can. Rent is usually paid half yearly, sometimes yearly—there is no hanging gale. The landlord has unlimited power in case of non-payment of rent, or non-observance of the stipulated covenants to proceed by due course of law to enforce payment or obtain the eviction of the tenant, of course he cannot raise the rent during the continuance of a lease. The respective rights of the tenant and landlord are defined in the lease; in case of non-payment for infraction of covenants, recourse is had to the Prætors Court of the district, if the sum in dispute or question is under 1,700 lire (68*l.*) if above that sum, to the Civil Court of the Province; the Court hears the case and decides; either party can apeal to this Court. The landlord has privilege over other creditors as far as regards produce on the land, farming implements, and stock, not on other property.

Eviction.—By proceeding in the Prætors or Civil Courts, as the case may be, a citation is served on the tenant by an officer of the Court calling on him to appear on such a day at such a place, before the judge of the district or of the civil tribunal to hear himself condemned for such and such reasons, viz., non-payment of rent, non-observance of covenants, &c., to quit the land he occupies, and failing to do so, to be evicted by force. The case is heard on the day appointed, the tenant either himself or by his counsel adduces his reasons in opposition and the Court decides; if he pleads, and proves his plea, that non-payment has been occasioned by adverse or accidental circumstances, he may at the discretion of the Court, obtain a short term to pay in, and if payment is then made, eviction does not follow, or he may be condemned and the eviction is carried out by the order and the officers of the Court.

Improvements.—All are done by the landlord; he is bound to give over the buildings in a habitable state, and to maintain them during the tenancy in a condition to render them fit for the purposes for which they were intended. If by tenant he has no security, the law recognizes no absolute right of compensation to the tenant for any improvements not specified in the lease. Should a tenant have erected buildings, planted fruit trees, or made other improvements, it is in the option of the landlord on the expiration of the lease to retain such improvements, in which case he must pay for them either on an estimate of the cost of materials and labour employed, or of the additional value given to the

property, at his option; or he may peremptorily call on the tenant to remove them, which he must do at his own cost and charges; in the former case the value of the improvements is determined by surveyors appointed by the Court, unless an amicable arrangement is come to between the parties. Any disputes on the termination of a lease as to the buildings or land being in a better or worse state than covenanted in the lease, are usually referred to two valuers, one named by each side. Tenants have no special facilities for raising loans for improvement of their farms, or for other purposes.

XIV.

WE continue our review of the land systems in Europe:

DENMARK.

Danish estates of the old type bear no apparent likeness to the manors of the English Domesday Book. Whereas the Norman and (under other names) the Saxon manor, was divided into (1) demesne and (2) tenemental lands, the Danish "Sœdegaard," or family seat, consists of (1) the "Hovedgaard," or demesne round the mansion, and (2) the "Bondergaard," or portion occupied by small farmers. Attached to the "Hovedgaard" are the "Bondergaard," or peasants' farms. These farms may not exceed 120 acres, and must have a minimum area of from 10 to 15 acres. Every farm is necessarily kept apart from the demesne, and let to a separate tenant on a lease for his own life and that of his widow. This species of tenure is supposed to have been common in Denmark at the date of the issue of the Code of Christian V (in 1683). That Code forbids the "Jorddrot" to throw tenemental farms into the demesne, and the language of later laws is distinctly tantamount to the admission that the peasantry as a class, (not generally, of course, but collectively) have a claim to continue on the soil as long as they comply with certain conditions of tenure fixed not by the landlord but by the State. It is a matter of dispute whether or not the "Fœstetvang," or obligation to lease on two lives, was a positive legal fact enforced by penalties, to the exclusion of other shapes of tenure, before the issue of an Ordinance of the year 1790. However, that may be, the existing law is so jealous of infringements of the "Fœste" principle that when any "Bondergaard" is converted into a freehold, twenty years must elapse from the time of its purchase before it may be let otherwise than on the two lives system, or on the fifty years' tenure. There was in times past much landlord oppression in Denmark, the landlord abused their powers to the utmost. Especially their territorial jurisdiction, which they exercised with atrocious rigour in a kind of Court Baron, where the Judges were often the lords' own footmen and coachmen. But about a hundred years ago a better state of things began. Parallel with the rise of the French Physiocrats there appeared in Denmark a school of Economists headed by Pontoppiden, whose writings opened a way for the land reforms instituted and suggested by foreigners like Reverdil, the Borntofs, Stolberg, and last,

though by no means least, the enlightened and unfortunate Struensee. The reforms introduced in the latter part of the last century, were followed by a rapid change for the better in the agrarian condition of Denmark. But relapses occurred, one between 1818 and 1826 so desperate that landed property lost more than half its value. At the same time illiberal regulations were passed. The leave to the landlords to sell farms without loss of fiscal privileges was cancelled. Large numbers of the newly-created freeholders disappeared. In 1835 was inaugurated the "Standerforfating," or Representative Constitution, according to which two consultative Assemblies, one in Jutland, the other in Zealand, were to be regularly convoked. Farmers, both freeholders and leaseholders, got elected to the Assemblies, and the political agitation which followed penetrated downwards. Soon a certain social ferment was remarked amongst the peasantry. The "Bondes," horizon was no longer bounded by corn, cows and horses. He was heard to talk of equal taxation, services, freeholds, quit-rents. A newspaper edited by J. A. Hansen began to discuss all manner of agrarian questions. The feudal pretensions and extortions of the landlords were challenged at country meetings, and there were angry debates in the Assemblies The agitation has not yet ceased.

NETHERLANDS.

The system of land-tenure in the Neitherlands is of a double, or rather a threefold kind. There are some lands held by small proprietors, or at all events by farming proprietors; there are others occupied by tenants holding from proprietors but without the concomitant practice of sub-letting; and there are, again, others in which the tenure is closely allied to English copyhold tenure. There are some districts where one system is far more prevalent than another, and there are other districts where the first system is to be found working side by side with the second in almost equal proportions. The law presumes that a landlord in letting out a farm does so with the object and on the understanding that it will be used and cultivated as such, and holds the tenant bound so to use and cultivate it. Accordingly, should the tenant fail to furnish it with the stock necessary for its cultivation, should he utterly neglect it, injure it, use it for purposes never intended, and generally should he fail to execute the conditions of the lease, and the landlord suffers injury thereby, the latter has the power to annul the lease and claims damages with interest. In case of half or more than half the harvest being destroyed by some unforeseen accident or misfortune, such as hail, frost, blight, inundation, &c., and in case the loss is not compensated for by subsequent good harvests, a proportionate diminution in the rent has to be made by the landlord for that year, provided that no express stipulation to the contrary has been inserted in the lease. Compensation can only be claimed in case the crops were still standing at the time of their destruction. The usual length of tenures varies according to district, but generally it must cover the time required for one full succession or round of crops; thus, in some parts it is the custom to grant three years' leases, in others five years, in others six years, and in others twelve years. The Civil Code forbids a tenant, without permission of the landlord, to sublet or make

over his farm to another under penalty of annulling the lease and payment of damages, with interest, and costs; the landlord is not obliged, after the original lease is annulled, to recognize the sub-tenancy. According to law, a tenancy may be created either by parol or by written agreement. When there is no written agreement, the lease is supposed to be for such time as is necessary for the tenant to gather all the crops from his land; thus, the lease of a meadow, orchard, or vineyard is supposed to be for one year; but the lease of a farm under a succession of crops is considered to last till the succession is completed. In case of tenancies, the payment to the proprietor is made in a fixed amount, and this is almost invariably by money. "Deelnebbende Pachters," or tenants who pay rent in proportion to, or share of, produce, are known only in a few parts of the country. The amount of rent is invariably settled when the agreement is made. If this, as occasionally may happen, has been done merely by word of mouth, and no receipt for rent already paid or other proof can be produced, then, by Article 1605 of the Civil Code, the landlord must be believed on his oath, unless the tenant prefer to have the rent estimated by properly qualified persons. The scale of rent is arranged amicably between landlord and tenant before the latter takes possession of the land; the custom of the place, private competition or other similar considerations naturally regulate its amount; but, in case, a landlord cannot by other means come to terms with an expectant tenant, recourse is had to valuation by any competent persons. But, as in such case no lease has yet been signed, or pledge on either side given or taken, it is purely a voluntary proceeding, and offers but little occasion for dispute or the intervention of the law. The landlord has undoubtedly an unlimited power of raising the rent on the termination of the tenant's lease, and of obtaining it provided the tenant consents to take a fresh lease on the new terms, but not otherwise. In case of non-payment of rent or other breach of covenant, including as has been already said, leaving his farm uncultivated or putting it to a use other than that for which it was designed, the landlord, if he suffer any injury thereby, may require the annulling of the lease and obtain compensation for expenses and damages with interest. The form of proceedure by which landlord and tenant enforce their claims does not materially differ from that prescribed by the Code Napolien. If it is a question of recovery of rent, the landlord may have recourse to a distress on the written authority of a Magistrate. The distress is effected with the aid of an officer of justice, who is empowered to resort to force, should it be necessary. The power of distraining can only be employed within certain limits, which do not materially differ from those observed in English law, the object being to avoid depriving the debtor of the absolute necessities of life, and reducing him to a state of destitution. Farm produce and implements and live stock are liable to be distrained. The effects seized are impounded and placed in charge of an appointed guardian till the day of public sale, which must be properly advertised. The proceeds of the sale are divided amongst the creditors as the law directs. The landlord in virtue of his lease, agreement, or contract has a prior claim to other creditors on the produce and every thing else on the farm, such as cattle, agricultural

implements, &c., whether they belong to the tenant or not. The form of procedure by which a landlord has it in his power to evict a refractory tenant whos lease has expired, or been cancelled in consequence of his having refused to pay rent or having otherwise infringed its provisions, is laid down in the 41st Article of Judicial Organization, and the 53rd and 122nd Articles of the Code of Civil Procedure. The landlord commences by presenting at the Magisterial or District Court a petition for the annulling of the lease on the plea of infraction of its provisions in case it has not already expired. It is at this point that the tenant has an opportunity given him of resisting the action by producing written proofs of existing, renewed, or extended tenancy. If he fails to do so, the Court issues a writ of ejectment specifying the time for its execution. In no case can this be delayed over one month, and, except in rare cases, where the tenant has shown some special claim to indulgence, it is put into immediate execution, very frequently on the day following its issue. Unless specially stipulated in the lease, the law gives the landlord, upon resuming possession, no legal right to the improvements made upon the farm by the tenant. On the contrary, the tenant may, on leaving his farm remove and take with him all that he has erected at his own expense, provided only that no injury be thereby done to the property. Should the landlord forcibly attempt to prevent such removal, the tenant may appeal to the Court, which, after proper enquiry, will authorize the removal, and send police-Officers to see that it is effected. The claims of the tenant are not necessarily forfeited by the mere circumstance of his having delivered up the farm. There are no complaints of unfriendly relations between landlords and tenants. Legislative interference has therefore been unnecessary.

XV.

We continue our review of the land systems of Europe.

France.

France is the most successful example of peasant proprietorship. There the land is chiefly occupied by small proprietors, who form the great majority throughout the country. Property is generally divided into three classes:—1. Properties averaging 600 acres, numbering about 50,000. 2. Properties of 60 acres, numbering about 2,500,000 3. Properties of 6 acres, numbering about 5,000,000. With some rare exceptions all the great properties have been gradually broken up, and even the first and second classes are now fast, merging into the third To such an extent is this the case, that even at the present moment 75 per cent. of the agricultural labourers in many departments are proprietors. The parcels of land held by them are oftentimes not more than a rood in extent, intersected by other holdings, and very often separated by considerable distances. This parcelling out of the land, although increasing every day, is to be found prevailing more especially in the Departments of the Cote d'Or, Haute Marne, and Haute Saone. The land is also occupied by tenants holding from proprietors, and by

"metayers," the nature of whose occupation will be explained below. But the tenants and metayers are in many instances small proprietors themselves, so that it may be said that small peasant proprietorships form the rule.

Tenure.—Generally speaking, the division of property naturally does not admit of large farms except in some of the purely agricultural departments, and then they partake more of the character of experimental farms. M. Chateauvieux writing in 1846, estimates the number of acres farmed by tenant farmers at 16,940,000, against 70,000,000 cultivated by proprietors and "metayers." The extent of the lease varies from one year to thirty years, according to the quantity of land, the mode of cultivation, and the custom of the Department. The tenant has a right to sublet his farm, unless the terms of his lease forbid it. In the case of sub-letting the original tenant is responsible. A lease can be made either by writing or by verbal agreement. If there is no written contract the duration of the lease depends upon custom. If a dispute arises as to rent, arbitration is resorted to, and the tribunals decide. So long as the tenant pays his rent and fulfils the conditions of his lease the landlord cannot interfere with him. No law or custom can alter the contract. In the case, however, of what is termed "dommages parcas fortuits on force I majeure," he has the right to demand a reduction of rent. The tenant has the right to sell his interest in his farm unless his lease forbids his so doing. Almost every lease, however, stipulates that he shall neither sublet his farm, or sell his interest in it without the consent of the landlord.

Rent.—Payment is made generally by a fixed amount in money. Payment in kind prevails in some Departments; this system is gradually disappearing. Payment by share of the produce constitutes what is called the "meteyerrie" system. In the "Code Civil" the "metayer" is called "colon partiaire." He is a tenant who pays no rent in money, but gives to his proprietors a certain portion of the produce of the land which he farms. Formerly it was one half. In fact it is a system by which the proprietor gives his land, and the "metayer" his labour and the cultivation, for which, if either fail him, he can claim no compensation. The system is becoming less and less resorted to, and now obtains in only a few departments. The amount of rent is entirely a matter of arrangement between the landlord and tenant. A farm may, however, be put up to competition as regards rent and the sale of produce. There is no law, custom of valuation, which regulates such transactions. The periods of the payment of rent vary according to custom and locality, but are generally agreed upon in the lease. The landlord cannot break a lease nor alter the amount of rent as long as it is in force. The tribunals alone can order an eviction or annul a lease on account of the non-fulfilment of its conditions.

There is no special law, which regulates the respective rights of landlords and tenants. They depend upon the "Droit Common." If the tenant does not pay his rent the landlord can seize his effects, and the Tribunal annuls the lease, the landlord has privilege over all property belonging to the tenant in such case.

Evictions.—In the case of evictions there is no special procedure. The "Droit Commun" alone regulates the proceedings of the proprietor in such circumstances. When the tenant does not pay his rent, he is summoned by the proper authority to do so within twenty-four hours. If this payment is not made, the proprietor, if the lease is a verbal one, obtains an order from the Judge for the seizure of all the effects of the tenant, which are on as well as off the farm. If the lease is a written one, and in order, he can do this by virtue of it alone. The tenant can take advantage of any irregularities in the proceedings to gain time. Article 1244 empowers the Judge to use indulgence towards tenants whom he may consider to have been hardly dealt with. and to grant them time for the payment of their rent.

Improvements.—The proprietor generally constructs all buildings, and must maintain the farm "clos et convert.' If the tenant builds, he does so at his risk and peril. At the end of his lease he can remove such buildings, as he is only obliged to leave on the farm what he found on it. The proprietor has no right to the buildings and improvements made by the tenant, who, in his turn, is bound to deliver up the farm in the same condition as he found it on entry. The relations between landlord and tenant are laid down by Articles 1763 to 1778. In practice, however, there is generally an understanding between them respecting improvements. For example, if the tenant wishes to drain, the landlord advances a certain sum, and the tenant pays 3 per cent. interest. The same system is adopted if new buildings are required. While peasant proprietorship has undoubtedly benefited France it has materially checked increase of population. Officiall statistics show that during a period of twenty-five years, 1836-61, the rural population has undergone a diminution of 1·18 per cent. while that of the towns has constantly increased. In 1846 the proportion of the rural population was 75·78 per cent. and that of the urban 24·22 per cent. In 1861 the proportion was, rural 71·14, and urban 28·26 per cent. and this ratio has not greatly varied since. The decrease in the number of children in the families of the peasantry is a fact fully established by the "Enquete Agricole," and it is generally remarked by those to whom questions on this subject were put, that there is a progressive tendency to diminution of fecundity in the families of the agricultural population.

PRUSSIA.

Prussia has been the subject of violent land legislation. The Prussian Legislature had, apart from the obligations of the feudal system, for its object the conversion of all land tenures into absolute ownership. It began by fixing the relations of landlord and peasant as they then were. It based upon those fixed relations its plan of regulation. It proceeded to ascertain the obligations and rights on the part of the lord as well as the peasant. It denied compensation to certain obligations and rights. It awarded compensation to the remaining obligations and rights. It then proceeded either to strike the balance or to provide the method for striking the balance between them. It laid down the principles of compensation It forsaw the possibility of that compensation amounting to the value of the peasant's income from the land. It, therefore

prevented that compensation from reaching such an amount as to render the peasant destitute and unable to retain his land, and as to thereby, defeat the object of State policy. It recognized, at any rate during part of its period, the inutility of investing a peasant with absolute ownership of his land, unless that land were sufficient for his maintenance. It provided a special quick procedure for all questions of regulation and commutation, and established rent charge banks to facilitate the transition from the old to the new system.

Lord Loftus, who in 1869 made a very able and interesting report on land legislation in Prussia, thus remarks: "It must not be forgetten that Prussia has proportionately shared in the universal increase of national wealth and welfare. It may therefore be truly said that Prussia, by her agricultural legislation., prepared herself skilfully to take advantage of all opportunities for increasing her prosperity, and that without such legislation she would not have been able to avail herself of them. Let the praise be equitably distributed. But neither let it be maintained that the national prosperity of Prussia is to be attributed solely to her agricultural legislation, nor let it be ignored that that prosperity owes much, indeed, to the great principles which underlie that legislation. Neither let it be advocated to follow blindly the example of Prussia in agricultural legislation, nor let it be ignored that, though her agricultural conditions were peculiar and her details of operation were specially adapted, yet her principles of agricultural legislation may be suitable to promote agricultural and national welfare in other countries."

XVI.

WE will conclude our review of the landed systems of Europe by taking a rapid glance at the system, which prevails in the United States.

UNITED STATES.

The system of land occupation in the United States of America may be generally described as by small proprietors. The proprietary class throughout the country is, moreover, rapidly on the increase, whilst that of the tenancy is diminishing and is principally supplied by immigration. The theory and practice of the country is for every man to own land as soon as possible. The term of landlord is an obnoxious one. The American people are very averse to being tenants and anxious to be masters of the soil, and are content to own, if nothing else, a small homestead, a mechanic's home, a comfortable dwelling-house in compact towns, with a lot of land of from 50ft by 100ft about it. In the sparsely-peopled portions of the country a tenancy for a term of years may be said to exist only in exceptional cases. Land is so cheap there that every provident man may own land in fee. The possession of land of itself does not bestow on a man, as it does in Europe, a title to consideration; indeed, its possession in large quantities frequently reacts prejudicially to his interests as attaching to him a taint of aristo-

cracy which is distasteful to the masses of the American people. Again, investment in land, except that held in cities, is not, as a rule, so profitable as many others. Railway, bank and insurance stock and mortgage bonds, for instance return a greater percentage for money ranging from 6 to 20 per cent. There are, moreover, heavy taxes to be paid on land. The Government of the United States may be termed the great landlord of the country, and is ever willing to sell its unoccupied acres to the first bidder, granting him, at the same time, every facility in the way of payment.

Tenancy.—As already stated tenancy cannot be said to exist as a system in the United States. There are, however, exceptions to the rule in Massachusets; farms of various sizes are rented, varying from 30 to 500 acres. There is no general system for renting them. They are frequently let on shares. In California lands are let to tenants amounting to seldom less than 80, and sometimes to as much as 8,000 acres. No lease of agricultural land can be let for a longer term than ten years. By Act of the Constitution of the State of New York adopted in 1846, it is declared "that all feudal tenures are abolished except rents and services heretofore lawfully created or reserved. No lease or grant of agricultural land for a longer period than twelve years, in which shall be reserved any rent or service of any kind, shall be valid. All fines, quarter sales, or other restraints or alienation of land shall be invalid hereafer." The Constitution adopted in Michigan in 1850 provides that—"No lease or grant hereafter in agricultural land for a longer period than twelve years reserving any rank or service of any kind shall be valid." Lands are appropriated by the constitution for the support of agricultural schools; but no facilities are given to individuals in the way of loans to purchase land. The lands .belonging to the State which have been ceded by the Federal Government are generally sold for a portion cash and the rest on credit with interest. Tenancy is created both by parol and by written agreement; but most generally by the latter. Long terms are not used in the leasing of farm lands. When no written agreement has been made the law declares that the tenant shall quit by notice. Should he refuse to do so, the matter goes before the Competent Tribunal. If a tenant pays rent half-yearly, he is entitled to three months,' and if annually to six months' notice. In the State of Pennsylvania, in cases where any lease exceeds three years, if not in writing, and signed by the parties, it has only the effect of a lease at will, terminating at the end of a year. When there is no agreement as to the time, the presumption of law is that it is a lease for one year.

Rent.—The amount of rent is fixed by agreement, and is payable in money or in shares of produce; say, one-fourth to one-fifth of the crop as the parties may contract. Formerly, tenancies were frequently fixed to be paid by kind, but they have been in most instances commuted for the money value of the articles that had to be given. As an example of such payment by kind may be cited a farm of 174 acres in the State of New York (one of the Livingstone manor farms) which was leased for twenty bushels of wheat and six hens annually, and that has since been commuted into a 50 dollars (7l. 10s.) a year rental. In the

Southern States it has become usual to let out farms to tenants on condition of receiving as rent some agricultural produce. A prevalent mode of letting land in Virginia is as follows :—A landowner, say, lets his farm,—may be of 700 acres,—to a tenant for one year, and receives as rent two-fifths of the agricultural produce, such as grain, hay, &c., and one-half of the fruit, poultry, and produce of live-stock; the tenant takes the remainder, works the farm, and finds his own agricultural implements. In cases where the landowner *only* gives the land, the labourer becomes practically a tenant, paying one-quarter of the cotton and one-third of the corn as rent, and keeping fences, &c., in repair and finding his own teams, tools, seeds &c., If the landowner furnishes the latter articles the crops are divided. In the wages system the monthly pay varies from 5 to 15 dollars (15s. to 2l. 5s.), sometimes more according to the value of the labour, and whether rations are given or not. Payments are, in most cases, made yearly—pay day coming just before Christmas. Occasionally the planters give the hands half of each week and all the land they can cultivate to themselves, paying wages for the remaining three days. As a general rule, in the United States the proprietors pay the taxes. The contract is usually a written one. If both parties are agreeable, the contract is continued year by year; if not, three to six months' notice must be given, which condition is inserted in the contract. The amount of rent is usually regulated by competition. Money rents are generally payable quarterly or half yearly. There is no legal restriction upon the amount of rent which a landlord may demand. The amount is fixed by agreement. The terms of a contract, when once made, cannot be arbitrarily altered; and if the tenant remains in the land after the expiration of the lease, he can only be held for the same amount of rent named in the lease. The legal means for the recovery of rent and other claims in most of the States is by process of the common law remedy of distress by the landlord, of replevin by the tenant. In some of the States the landlord is driven to a summary proceeding to establish the amount due, and this amount is a preferred lien on the tenant's property on the premises, or wherever the same may be found, if removed after proceedings commenced. In the State of Maryland property can be pursued for thirty days, and the rent recovered by its sale, even if it has passed into other occupancy.

Evictions—Evictions of tenants holding over or where leases have been forfeited by their own terms and conditions for non-payment of rent or other cause stipulated between the parties, are by a summary process before a Justice of the Peace, usually with right of trial by jury if the matter in controversy be of the value of 20 dollars (3l.) These proceedings are ordinarily terminable in ten days, in some of the states in less time. The case takes the ordinary course of trial at common law. No special Statutes exist according time to tenants to redeem but the equitable jurisdiction to relieve against forfeitures obtains in most, if not all, of the States upon the same principle as prevails in England. Evictions are of very rare occurrence in the United States, at least among farmers, among mechanics and persons living in rented dwellings they sometimes take place, Evictions are generally caused from default of rent.

Repairs.—Permanent repairs are usually made by the landlord. The law recognizes no right in the tenant to any improvement made except under covenant in his lease.

Improvement.—Improvements made upon buildings become part of the real estate and the property of the landlord. Improvements and fixtures made by the tenant, for the purpose of trade and commerce, are removeable by him. Otherwise the subject is regulated by the convention of the parties, and not by legislation. It is frequently stipulated in the agreement for the landlord to take the improvements made on a leased property, or the tenant to buy the ground, each at an appraised value, at some specified time. Tenants have no means of raising loans for the improvement of the farms leased by them from the Government, or banks chartered by the Government, or by special law. If a tenant raises money for the improvement of the farm he occupies he must raise it on his personal credit, or that of his friends, from neighbours or banks. Loans would in this case require the same conditions as in other transactions, and be contracted at the rate of interest obtaining in the particular State where contracted. Tenures resembling the copyholds of England are unknown in the United States. But two kinds of tenures exist—that of absolute ownership, and that of lessee. The relations between landlords and tenants are, as a rule, friendly and beneficial, resting upon law, and not upon custom. No legislative interference is required. The mode of cultivation by tenants is the ordinary and general mode of cultivation of farm land. Where there is sufficient fertility to make grain or grass-growing profitable, the cultivation of the farm, employment of labour, mode and standard of living, solvency, independence, and general circumstances and character of the tenants are about equal to that of the small proprietors. There is in the farming districts scarcely any perceptible difference in any respect between those who live on rented farms and those who farm their own lands, except perhaps in the superior credit that a landowner commands in money transactions arising from the ownership of real estate. Tenants may to some extent, live a little more generously and freer from care than many of those who own land. Many of the landowners in this country are persons who, by their own industry and rigid economy, have accumulated some funds, with which they have bought, and but partially paid for, the land they own. In all such cases, it requires persistent effort and close economy for years to clear off the remaining debt. Tenants receive no assistance by law, public credit, or otherwise to become owners of their holdings or other farms. A tenant is entirely dependent on his own exertions and personal credit in the matter of buying property.

XVII.

WE HAVE concluded our review of the landed systems in force in Europe and America. The reader has doubtless noted their peculiar characteristics. With his knowledge of the tenures of Bengal he will be

able to compare those systems with what is prevalent in this province. We will take a future opportunity to contrast them and to show whether the proposals made by the Rent-Law Commission are in consonance with the ideas regarding the occupation of land and rent current among the advanced nations of Europe and America. In the meantime we will acquaint the reader with the present position of the new Rent Bill.

The Bill as we have already stated has been translated into Bengali and Urdu and circulated with the Government *Gazette*. The non-English-knowing native population have thus been placed in a position to read for themselves the Bill and the report of the Commission. No general notification has been issued about the extension of time for the consideration of the Bill by the public, but when the translations have been issued in November, at least four months' time ought to be allowed to them to read, digest and comment on the Bill. This time we hear the Chief Justice has asked for the High Court for the consideration of the Bill and the submission of their views thereon. The District and Subordinate Judges and a few select Munsifs have been invited to give their opinion upon the Bill by the 30th day of the month of November. This time we repeat is too short; it ought to be extended, if the Government at all cares for mature opinion from its officers upon this vitally important measure.

The Government of Bengal has already submitted to the Government of India for their own consideration and for that of the Secretary of State the Report of the Commission with the draft Bill. The Lieutenant-Governor has intimated that he has not accepted the draft Bill in its entirety, that modifications will be made after the opinions of the local officers and of the classes most interested in it have been received. But His Honor thinks that the main lines laid down by the Rent Commission will not be departed from. His Honor has strong opinions on the subject and holds that the time has arrived for a thorough revision of the Rent-law, with a view to strengthen the position of the ryots. His Honor has recommended that the Bill should be introduced in the Governor General's Council for making laws and regulations, and that the Hon'ble Mr. Reynolds should be put in charge of it. This step His Honor suggests should be taken, because the Imperial Council comprises members from the different provinces, whose varied knowledge and experience will be of material aid to him in settling the principles and details of the Bill. If this position holds good, then the uselessness of the local Council is made patent. What is the use of keeping a local machinery for legislation, if in most important local matters it is to be superseded? The Rent Bill relates to the land tenures of Bengal, to the determination of land rent, to the mode of recovery of rent, and to the disposal of rent suits in Bengal, and such a Bill is taken off the hands of the Bengal Council. It is said that there are provisons in the Bill which affect the jurisdiction of the High Court, and that the local Council is not competent to deal with matters affecting the High Court. But this Bill no more affects the High Court than does the existing Act, we mean Act VIII. of 1869, and yet the latter measure was passed by the Bengal Council. Why a different course is to be pursued in respect of the present Bill is not quite clear to us. We admit that the Imperial

Council comprises members with varied experience, but no other province of India has a system of landed tenures analogous to that prevalent in Bengal. Those members have had no experience of this province, and they will therefore discuss the measure from stand-points quite foreign to Bengal. Nurtured in the school of periodical settlements, State landlordism, and small proprietorships they cannot be expected to sympathize with the system in force in Bengal, while lacking actual experience they will necessarily depend upon the information which may be supplied to them by the Bengal Government. It may be said that Act X. of 1859 was passed by the Governor General's Council. It is enough to say that then the local Council was not in existence. Besides, then the Bengal element was predominant in the Governor General's Council. There were Sir John Peter Grant, Sir Henry Ricketts, and Mr. Currie, all Bengal Civilians, with large experience of Bengal, particularly its revenue system. The Act then passed by them was considered the Ryot's Charter, but the wise men of Bengal of the present day do not put their faith in it—they advocate a more radical measure, and they naturally think that such a measure is likely to receive the sympathy of officials, who have been taught to regard the dead-level system of landed tenures as the Arcadia for the Indian peasantry.

We hear that the Government of India, without discussing the Bill, have agreed to the recommendation of the Bengal Government for its introduction into the Governor General's Council. Mr. Reynolds has been accordingly charged with it. That officer has been, however, instructed to make local enquiries respecting the provisions of the Bill, and to modify them in consultation with the Bengal Government before formally submitting it to the Council. It has, therefore, been arranged that he should visit the different divisions of the Bengal Provinces and hold conferences with the local officers, the leading zemindars and intelligent representatives of ryots. He has already proceeded to Dacca for the purpose of this special enquiry. A correspondent thus writes to us on the subject: "I dare say you have heard that Mr. Reynolds is to meet the Commissioner of Dacca, Mr. Pellew, at Dacca on the 17th Instant, in solemn conclave assisted by a *Punchayet* of five Collectors *viz.*, Mr. Coxhead, Collector of Dacca, Mr. Veasey do.of Backergung, Mr. Weekes do. of Furreedpore, Mr. Jones do. of Tipperah and Mr. Alexander do. of Mymensing to discuss the proposed Rent Law. How much do these Collectors know about the relations between Landlords and Tenants!" These Collectors, without meaning any disparagement or disrespect, we submit, are young in the service, without much local experience, and as we believe without much practical knowledge of the relations subsisting between the landlord and the tenant in their respective districts, and of the working of the Rent Laws. It is not their fault that they do not possess the necessary knowledge. Under the prevailing system of promotion and transfer our local officers generally speaking have been perpetually on the move, and as they seldom stay long enough in a particular district, they have not much opportunity to acquaint themselves with the condition of the people, and the relations of one class with the other. Under Act VIII. of 1869 the jurisdiction of the Revenue Courts in rent-suits has been withdrawn, and the Col-

lectors have therefore no opportunity of watching the influence of the law on the life of our agricultural population. But Mr. Reynolds' enquiries will not, we believe, be confined to the local officers. He will, we believe, hold conference with Zemindars, Vakils, Mooktears, and representatives and friends of the ryot. In other words he will now do what the Rent Commission ought to have done at the outset. He will take evidence which the Rent Commission ought to have taken before preparing their Bill. But how will he proceed? What new light will he draw by a flying visit to this district or that district? We hear that he is expected to conclude his enquiries within three months. Can such a stupendous work as a local investigation into the working of the landed tenures in Bengal, be completed within so short a time as three months? In the first place Mr. Reynolds' hands have been tied by the draft Bill. His object is to enquire whether or no the provisions of the Bill are acceptable to the zemindars and ryots. But will no enquiry be made into the preliminary and primary question as to whether there is any necessity for such a radical and wholesale measure as has been propounded by the Rent Commission? The first question for enquiry is as to the present condition of the Bengal ryotry. Is it better or worse than that of the peasantry in the other provinces of India? We have repeatedly quoted the opinions of the Bengal Government under successive Lieutenant-Governors to the effect that the Bengal ryot of the present day is far better off than his brother in Upper India, in the Deccan, and in Madras. No less a friend of the ryot than Sir George Campbell has admitted this fact, and the present Lieutenant-Governor is of the same opinion. Sir Ashley Eden even goes further and holds that the Bengal ryot is in a far better condition than the peasant in some of the advanced countries of Europe. If such is the case, it is obvious that the present system of land tenures in Bengal has not hampered the prosperity of the Bengal peasantry. Where is then the necessity of fresh legislation, boulversing the present order of things, demolishing vested rights, and redistributing landed property for the sake of theories of men, whose responsibility will cease with their privilege to draw salary from the coffers of this country, but the evil effects of whose mischievous meddlesomeness will be felt by our children's children, aye, by all posterity? We do hope that Sir Ashley Eden will not act in haste. It is evident that by deputing Mr. Reynolds to make the local enquiry under notice he is not satisfied with the work of the Rent Commission, that he wants more information, more light, aye, a clear enunciation of the views of the people concerned. But Mr. Reynolds single-handed cannot perform this work within three months. Our Government ought to follow the English precedent in such matters, appoint a new Commission, and authorise it to take evidence on oath. Let the evidence of all classes of the people be taken and then a measure be based upon evidence so elicited.

XVIII.

COMPARISON is often instituted between the condition of the peasantry of Ireland and that of the tenantry of Bengal, and it is urged that the legislation, which is deemed necessary for Ireland, holds equally good for Bengal. But the two cases are not at all parallel. The landlord in Ireland has far greater power than his brother in Bengal. This point has been clearly brought out in the late discussions on the Irish Compensation for Disturbance Bill. Non-payment of rent in Ireland has always carried eviction. Even the Land Act of 1870 did not dispense with this provision. It was provided that if a tenant was dislodged from his holding he was to receive compensation according to the limit of a scale determined by the Act. To that principle there was a most important exception—namely, that eviction should not be "disturbance" in cases where it was founded on non-payment of rent. In Bengal although the law recognizes eviction for non-payment of rent, it is still hedged in by so many conditions and restrictions that it is practically a dead letter. By the Compensation of Disturbance Bill it was sought to suspend the process of eviction for a time, and Mr. Gladstone thus defended it. He said that the present distress in Ireland "was due to the act of God, that a succession of bad harvests had produced in parts of Ireland an extreme state of things. In truth, the act of God in the failure of the crops had replaced the Irish occupier in that condition in which he stood before the Land Act, because he was deprived of his usual means, and had to contemplate eviction for non-payment of rent, and, as the consequence of eviction starvation. It is no great exaggeration to say that in a country where agricultural pursuits are the only pursuits, and where the means of the payment of rent are entirely destroyed for the time by the visitation of Providence, the occupier may regard the sentence of eviction as coming very near to a sentence of starvation." Considering this state of things Her Majesty's Government proposed that if a landlord in the distressed tract should wish to eject a tenant for non-payment of rent he must give him compensation, but this exceptional provision should be in operation for 16 or 18 months only. As Mr. Gladstone said, "the proposed measure is limited, in time; it is limited in place, it is limited, above all, in subject-matter. Not a farthing can be allowed under this Bill by a Judge unless where, first, there is inability to pay; secondly, it is proved to be due to the recent visitation of Providence; thirdly, the tenant is willing to accept reasonable terms; and fourthly, the landlord unreasonably refuses them." Again: "The question now is whether we establish a *prima facie* case for the principle of the Bill that something ought to be done to prevent those extreme calamities which will arise when a portion of the nation, deprived by the act of God of the means of payment, is to be liable to eviction, absolutely without resource, and to the total confiscation of that estate provided for the tenant by the Land Act, in instances in which he has nothing to do with the unfortunate circumstances which expose him to it." Mr. Gladstone thus concluded: "I admit the existence of that which in some parts of the country may be called a conspiracy—not against the pay-

ment of rent only, but against the payment of all just debts. I am not able to draw a distinction between rent and other debts. Rent must be regarded as a just debt, and no admission will be made by me or any of my right hon. friends in any way tending to weaken that proposition. (Hear.) But what we fear and what we feel is this—that there is no such sure way of strengthening the anti-rent agitation as leaving some pleas of justice in the mouths of those who promote it (hear); and that there is no way of making war upon the anti-rent agitation which is so sure to have effect as that of drawing a broad and clear line between the cases where a man is stripped by the visitation of Providence of means of payment and is willing to offer reasonable terms, subject to the tribunals of the country, and cases, which the noble lord supposes to exist, where, under the influence of the anti-rent agitation, persons able to pay allow themselves to lose house and home rather than pay." It would be thus seen that Mr. Gladstone based the necessity of the new Bill not so much on equity as on humanity, but we all know that the Bill was ultimately rejected by the House of Lords. Even in the House of Commons many Liberal members sided with the Conservatives and voted against the Government. In the House of Lords the opposition was headed by no less a personage than Earl Grey, the redoubted champion of Liberalism and Reform. Earl Granville in introducing the Bill in the House of Lords cited the following case in justification of the measure. It is a report from a Police officer:

"*July* 24, 1880.

"I have to report that at——, in sub-district——, of——, union of——, there are about 12 families, all of whom have been served with ejectment notices to quit for non-payment of rent. Out of those families two have been stricken with fever. One named——, mother and three children, no food, clothing, or bedding, lying on wads of straw or dried rushes; the other family,——, three children were lying with fever, but are now convalescent, also living partly by relief, but not in such distress as the——family, the disease in whose case was partly occasioned by insufficient nourishment. They are receiving now from local medical officer nutriment consistent with the different stages of the disease, and the husband of——is receiving union outdoor relief in the way of money. About 25 years ago this town land was only paying a rent of £36 a year. A change of landlords then took place, and some short time after it was raised to £76 per annum, which it has since paid and is now supposed to pay, and which appears to be a large increase on what in general is but a cast-away bog reclaimed from time to time by the tenants. Some of the families on this town land are being relieved from the Mansion-house Committee, and the remainder —eight families—are receiving union outdoor relief. I am led to believe that none of the tenants in this town land are in a position to pay rents, owing to the recent bad harvests."

His Lordship remarked, "now I ask your lordships to consider the position of the Irish Government who are obliged to enforce 12 such evictions as these, not by one or two policemen, but often by 100 or 200 men of that force." But Earl Grey said:

"I am one of those who hold that a bad harvest is not a sufficient reason for the tenant to claim a reduction of his rent as a general rule; and that it is not desirable that rent should fluctuate according to the variations of the seasons. The tenant offers the amount of rent which he believes he can fairly pay

on an average of years. (Cheers.) In years of special prosperity such as we had a few years ago, the landlord receives no increase, and in the same manner when a bad year comes the tenant has, in general, no right to expect a reduction of the rent he has undertaken to pay. This, I say, is a general rule. At the same time, I fearly grant that the last three or four years have been so exceptionally unfavourable, that the greater part of the landlords of England and Scotland and Ireland have felt it to be both their duty and their interest not to be extreme in demanding their rents, and in the great majority of cases have made concessions to their tenants. But that is a very different thing from depriving the landlords by law of the means of enforcing their claims for rent. (Cheers.) The circumstances of England and Ireland, I would point out, are entirely different in this matter. In England the lease generally contains provisions by which the tenant who does not pay rent can be deprived of his land. But in Ireland, as I understand, the power of an eviction is that alone by which the landlord has any assurance of getting his land, and I think it is the opinion of all the most experienced agents in Ireland—of all the persons best acquainted with the manner in which land is held in that country—that by suspending the power of eviction or, what comes to the same thing, by allowing that power to be exercised only under a penalty which no landlord would venture to incur, the Bill will practically suspend the power of getting rents. (Cheers.)

In some cases the inability of a tenant to pay rent may arise from circumstances which fairly entitle him to indulgence ; in others it may be the result of improvidence and mismanagement. The landlord may have a knowledge of circumstances which make it inexpedient for him to show indulgence, and yet he may be totally unable to establish that fact to the satisfaction of a County Court Judge ; so that I am afraid the practical effect of this Bill will be generally to suspend the power of levying rents in Ireland. And we have this to consider—landlords have in a great majority of cases no other means of livelihood than their land. They have also claims upon them which they are bound to meet—the interest of mortgages, family charges, &c.

Again :

The tendency of this Bill is to teach the people of Ireland that they need not be careful and economical in prosperous times, because it teaches them that when there comes a change and when things get bad there is always Parliament to go to. There is no worse or more fatal teaching than that ; but above all, I condemn this Bill on account of its tendency not to increase, but to destroy security. Remember what the circumstances are. For many months there has been an agitation in Ireland for what is called the abolition of landlords. The proposal, in other words, is to transfer the ownership of the land from those to whom it now belongs to the tenants. A league has been formed for that purpose, and meetings have been held at which the tenants of Ireland have been advised in the strongest language to keep a " firm grip" upon their land. They have been told that it is right for them to hold thus to the land, with or without paying rent. My lords, that advice has fallen upon no unwilling ears. We know what has been done. We know that threats of the most violent kind have been used, not only against every man who should venture to take land after the eviction of a previous occupant (however just the eviction might have been), but also against tenants who are able and willing to pay their landlords, lest they should presume to do so. And these threats have not been empty words. They have been followed by most cruel acts. You all know how many barbarous outrages have been committed in the last two months, and now at the end of that period Parliament is invited to pass a Bill the avowed object of which is to enable the Irish tenants to keep that firm grip upon the land which they desire without paying rent to their landlords. (Hear, hear.)

The Earl of Beaconsfield was equally strong. His Lordship said that the rights of property are the "main basis of liberty and civilization," and they should not be lightly interfered with. His Lordship thus enumerated his objections to the Bill:

"My first objection is because it imposes a burden upon a specific class; it acknowledges that it has to deal with a national misfortune, and then, I think most illogically and most unwisely, it proceeds to say that the means by which it will try to remedy the unexpected evils that have occurred shall be means which shall have been furnished by only one class in Ireland (hear, hear), and that class not a numerous class, and above all a class that is suffering as well as the rest of the population. Well, I think the second objection to this Bill is that it introduces insecurity into all kinds of transactions (hear, hear), and the third objection which I have to offer is that it appoints a public functionary to whom it delegates the extraordinary power of fixing the rents of the country. (Cheers.)

The Duke of Argyll had said, that "there was an agricultural distress in Ireland," Lord Beaconsfield replied, "well, it is possible there is. We will admit it. But I cannot understand that the best way of alleviating the agricultural distress is by plundering the landlords." His Lordship concluded by saying that "the Bill was a step for the transference of the soil from the legal possessor to the casual occupier." We all know what the result of the debate in the House of Lords has been. The Bill has been rejected,

Now, what does the history of this Bill teach us in Bengal? Here was a measure limited in time, area, and character, designed to meet an exceptional crisis, but it has been condemned by public opinion in England and rejected by the House of Lords. And how is such a crisis dealt with in Bengal? As the records of the Famines of 1866 and 1873-74 shew the zemindars invariably suspend collection of rent from ryots suffering from failure of crops, "an act of God," not unfrequently remit rents, but never evict them. Then again there is no comparison between the condition of the peasantry of Ireland and Bengal. We are familiar with the pictures of the misery of the Irish tenant; in Bengal there has been happily a considerable change for the better. We give below the testimony of no less a personage than Sir Ashley Eden on the subject;

"I have just returned from visiting the Eastern districts, and I may say, on this occasion when my administration is only at the commencement, what I could not well say at a later period without seeming to seek credit for the Government of which I am the head. Great as was the progress which I knew had been in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to the country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry, I believe, of any country in the world; well fed, well clothed, free to enjoy the full benefit of their own labours, and to hold their own and obtain prompt redress for any wrong."—Sir Ashley Eden's Speech in 1877.

And the administration report of every division annually contains evidences of the same description. Then, again, it is the peasantry of

Ireland, who are agitating for changes in the law, but in Bengal they are contented enough unless they are excited by official fire-brands, such as those, who produced the conflagration in Pubna and other eastern districts in 1872-73. And yet the Government of Bengal proposes of its own accord to revolutionize the landed system in Bengal, to redistribute property on pet theories of its own, to uproot rights of property, which Lord Beaconsfield says constitute the "main basis of liberty and civilization," to sow discord where there is peace, and to flood the country with litigation. We do hope that Sir Ashley Eden will seriously consider the situation into which he is being dragged. Has he collected any evidence to shew that the condition of the ryots has deteriorated under the existing land-law, that they are oppressed or ill-protected, or that the state of agriculture has suffered in consequence of the restrictions of the present law? If not, why meddle and muddle?

XIX.

WE HAVE given a brief survey of the land systems in the different countries of Europe and in the United States of America. The leading features of these systems are that where a landed proprietary exists, the land-owner as the name implies is the master of the soil. He can do what he likes to do with his land. He generally lets his land to large farmers or small tenants. The leases are both in writing and parol; their currency is generally determined according to the mutual agreement of both landlord and tenant; in some countries the practice is to limit it to eight or ten years. There is no intervention of a court of justice or fiscal officer in fixing the rent, which is generally determined by competition or by mutual agreement between the landlord and tenant. The greatest facility is given for the collection of rent. Within almost a fortnight of default process is issued for the realization of the rent due. Non-payment of rent generally carries summary eviction —there is no appeal against such eviction. There is no occupancy or sub-proprietary right recognized in Europe or America. Where the peasant is proprietor his right to the soil is of course absolute; but where a proprietary class exists as in the majority of the European countries, the tenant has no right of occupancy in the soil beyond the terms of his lease. The custom of giving compensation for improvements made by the tenant varies in different countries. Where for instance the buildings and appliances in a farm belong to the proprietor, the farmer or the tenant has no right to compensation. But where the improvements are made by the tenant, he is allowed to take away the improvements if he can, or to claim compensation. But this is not the rule everywhere. In some countries the right of the tenant to improvements or compensation is not recognized. It is observable that in both Europe and America the courts of justice and the executive authorities interfere as little as possible with the relations between the landlord and tenant. And yet it cannot be said that the people, who till the soil in Europe and America, are slaves. They are intelligent

beings; many of them are not without the blessing of education; they enjoy the benefits of political independence and national Government and their condition is not worse than that of the peasant proprietors in the same or neighbouring countries. In those countries there is no check on the increase of population or on the cultivation of the products of the soil.

Let us now turn to Bengal. Here at every step the landlord and the tenant are fettered by the chains of law, the courts of justice, and the officers of Government. If the Government had contented itself with merely protecting the down-trodden ryot against the oppressive zemindar, the poor against the rich, the weak against the strong, it would have discharged its duty as the ruling power. This was what the Legislature in 1793 had promised to do under the reservation made in the Permanent Settlement Regulations. But the successors of Lord Cornwallis interpret the reservation in a different light. They not only assert the right of the Government to protect the ryot and to promote his welfare by a rigid and impartial administration of the law, which is its primary duty, but also to interfere from time to time with the rights of property created by the Permanent Settlement and to redistribute them according to pet theories of their own. It is this interference, this aggressiveness, on the part of the Government, which takes the land question of Bengal from the range of ordinary social economy and raises it to the dignity of a socio-political question. It is undoubtedly true that the condition of the tenantry of Bengal thirty years ago was very much depressed, but it was not worse than that of the landlords themselves. And what was the cause of this evil? We are constrained to say, the rapacity of the Government. The Parmanent Settlement was made at a rate, which was simply ruinous to the landlords. The Government took ten-elevenths and left one-eleventh to the landlord, and however rich the latter, he could not hope to meet the heavy demand of Government. No wonder then that within the first few years of the Permanent Settlement many of the great landholders of Bengal found themselves bereft of their ancestral acres. The great House of Nattore, with the Government assessment of 52 lakhs of rupees upon its estates, was the first to go, and many others of lesser note, shared the same fate. The condition of the tenantry of such pauperised landlords could not be better, and both suffered alike. In those days the rent paid by the ryot was generally half the gross produce of the soil, but even that enormous rate of rent did not suffice to keep the landlord afloat. He sank like a ball of lead in a stream, heavy with his debts to Government. The authors of the Permanent Settlement had, however, wisely left a reserve for the zemindar to recoup himself in time. This was the waste lands which they assigned to the zemindar for his own use and benefit. The object was two-fold, 1stly to compensate the immediate loss to the zemindar by prospective profit, and 2ndly to stimulate the cultivation and reclamation of jungle. In this they were not mistaken. For though the big zemindars at the era of the Permanent Settlement found the load too heavy, there were others, who owned less extensive estates, and whose liabilities were therefore within manageable proportions, as well as those who took their places by small bits, and who had capital

of their own—and these landlords gradually extended cultivation, and benefited by the reserved waste lands. But even then for nearly sixty years we might say the position of neither the landlord nor the tenant did materially improve. Then came the Crimean war, and the China war, which stimulated the exportation of seeds and rice, and also the epoch of Railway Progress and internal communications, which offered new facilities for the transport of goods. There was a constantaneous demand for Indian produce in foreign countries and in nearer markets at home. The price of produce consequently rose, and with it there was at once a bound in the condition of the landlord and tenant. Both began to thrive, and though rents were raised the ryots did not object to pay higher rents. If the legislature had not interfered with its aggressive, repressive, and disturbing measures, we do not think there would have been any discord between the landlord and the tenant. The gross inequality between the share of the Government and the landlord in the produce has been rectified after the lapse of nearly three quarters of a century, but if fresh complications are now arising, we must thank our benevolent Government for it.

We have shewn above the peculiar features of the land systems of Europe. It will we believe be admitted on all hands that if the peasantry in European countries had slaved under those systems, they would have risen in rebellion against them. But if they do not complain against them, why should the land system of Bengal, under which the tenantry have admittedly prospered, be interfered with? What do the Rent Commission propose? 1stly. They propose to make a free gift of holdings of 100 bigas of land and upwards to ryots by rendering them not only heritable but transferable by devise, gift or mortgage without the consent of the landlord or compensation to him. 2ndly. They propose to confer occupancy right upon ryots or tenants after three years' possession or occupation. The highest judicial authority in the country, the late Chief Justice, Sir Barnes Peacock, has declared that even twelve years' occupancy right, created by Act X. of 1859, is an encroachment upon the proprietary rights of the zemindar guaranteed by the Permanent Settlement, but the Rent Commission would make every ryot a coparcener with the zemindar. 3rdly. They propose to sanction the growth of an occupancy right within an occupancy right—wheel within wheel, and this will touch not the zemindars alone, but talukdars, lakhirajdars, and even jotedars. 4thly. They propose to take away from the zemindar and other owners of land the right to give consent to build, dig tank, or plant trees, upon his land, and while they take away this right with one hand, they give, with the other, the ryot, power to claim compensation for such improvements in case the latter be disturbed in his possession even for non-payment of rent. 5thly. They propose to give power to the occupancy ryot to sell his tenure, not with the consent of the landlord as originally proposed by some, nor to *bona-fide* cultivating ryots as originally proposed by the Lieutenant-Governor, but to any and every body. 6thly. They propose to permit enhancement of rent under conditions, which will practically defeat the object aimed at. At present the enhancement clauses of Act X. of 1859 are simply unworkable, and the new clauses will be still more difficult of operation. Not only

have the difficulties in the way of enhancement been multiplied, but certain provisions have been made for deduction of rent in favour of ryots of a certain class, which are simply indefensible in law and justice. The Commission recommend these provisions on the ground of over-population in future, but no such safeguards are deemed necessary in European countries where there is no check on increase of population. 7thly. They propose to abolish the process of distraint in the realization of rent. The primary object of the amendment of the Rent-law was to facilitate the collection of rent, but far from offering any facilities the Commission make recommendations, which would interpose delay, trouble and expense. Let the reader compare the land systems, which prevail in European countries with that which the Rent Commission recommend, and then say whether human nature in Bengal is so exceptional as to require an exceptional treatment.

We are, however, glad to learn that the Lieutenant-Governor is not pledged to the Bill of the Rent Commission. His Honor has we believe perceived that the Commission have gone too far, and that if their Bill be adopted it will revolutionize the landed tenures of Bengal. What His Honor wants, if we are correctly informed, is that *bona fide* cultivating ryots, if they wish to permanently occupy lands, should be made secure in their position, and that they should not be disturbed so long as they would punctually pay fair rents. This is a simple proposition, but it remains to be seen how it is worked out in the Bill, for we have not unfrequently seen that the Government says one thing and does another. We may, however, assure the Lieutenant-Governor that no good zemindar wishes to oust a ryot if he pays fair rents. It is not his interest to do so.

XX.

SPEAKING of Behar the Rent-law Commission remark: "The Behar system is really a Metayer system with most of its worst features and few of the advantages enjoyed by tenants of this class in continental Europe. The European Metayer is usually secure in the possession of his land and is certain at least of half the gain resulting from any improvements which he makes by his own labour or capital. His landlord furnishes half the plough cattle in some places, and in other, half the seed. In many places a house is kept up for him. Thus he receives considerable assistance towards producing the crop in which he and his landlord are sharers. The Behar Ryot on the contrary gets nothing but the bare land; his possession is insecure, and he has no incentive to improvement, while the petty oppressions practised in collecting a rent in kind leave him too often less than half the crop, the whole cost of producing which has fallen upon him alone." The Commission have thus written evidently without an enquiry into the real state of things in Behar. The memorandum of the Committee of the Behar Landholders' Association, which bear marks of much intelligence, ability and

industry, supplies facts, which flatly contradict the statements of the Commission. We will give a few facts from this paper.

The classification of ryoti tenures in Behar is thus set forth in the memorandum: One classification is made with reference to the length of the ryoti holding, another with reference to the incident of the place of residence of the ryots, and a third with reference to the mode of payment of rent. under the last method all ryoti holdings are divided into two classes, *viz, Nukdi* and *Bhowli.* When the payment of rent is made in cash, the tenure is called *Nukdi* (from *Nukd* cash.) When the payment is made in kind the tenure is called *Bhowli* (probably a Hindi compound made up of *Bhow*, rate price, and *wali*, pertaining to.) The *Nukdi* tenures are of several classes known by distinct names; the most important of them being *Nukdi* proper *Balkut* and *Hastbood* The tenure is called *Nukdi* proper or *Chikkut* when the cash rent fixed previously is paid for every bigah of the holding without any regard to the produce. The *Balkut* (from *Bal*, ears of corn, and *katna*, to cut) is the kind of tenure where the rate of cash rent per bigah is determined on an inspection of the actual produce of the fields, and this rate charged for every bigah of the ryot's holding. The *Hastbood* is the kind of tenure where the rate of rent is fixed previously; but the ryots are liable to pay rent at that rate for those plots of land only where the harvests grow. Thus if a ryot holds twenty bigahs of land, and the tenure is *Nukdi* the amount of rent, the rate of which must in this case have been fixed previously, say rupees five per bigah, would be one hundred rupees; but if the ryot held the same quantity of land in *Balkut* tenure, the rate of rent would be determined only after an inspection of the actual produce of any one harvest, and supposing the rate then to be determined at Rs. 6 per bigah in one year the amount of rent would be Rs. 120, and supposing the rate to be determined at Rs. 4 the next year, the amount would be Rs. 80. And if the rate of rent be at five rupees per bigah, and *Kharif* has grown in 8 out of twenty bigahs, and *Rabbi* in 5 out of 20, the amount of rent payable, in case the tenure is *Hastbood* would be Rs. 65, and if in another year, *kharif* grows in 12 bigahs and *Rabbi* in 13, the amount of rent payable is Rs. 120, and this irrespective of the amount of produce. There is another kind of *Hastbood* tenure which is peculiar to certain pergunnas, and in this there is a combination of the two kinds of payment. Thus a *Nukdi* rental is previously agreed on, and it is understood that a certain percentage of the ryots holding is to be held in *Nukdi*, and the remainder in *Bhowli Agorbatai.* The ryot has in this case the right to select the best lands called *Joiet* (best) for *Nukdi* payment.

Bhowli tenure is of two kinds (1) *Agorbatai, (2) Danabandi. Agorbatai* (from *Agora*, watching, and *Bantna*, dividing) is that kind of Bhowli tenure where a division of the crops is made in predetermined proportions between the landlord and the tenant. When the crops are yet in the field and ready for reaping the landlord appoints *Agroras* (watchmen) to watch that none of the crops are fraudulently made away with. When ripe, the crops are gathered in the *khalians* (threshing floors) which are places usually set apart for this purpose near the *Basti.* The charge of reaping, (one out of twenty-one boundles gathered) is

paid out of the entire produce, and the remainder then, after threshing and cleansing, is divided in predetermined proportions between the landlord and the tenant. The usual proportion is half and half or nine annas to the landlord and seven annas to the tenant out of the 16 ans. produce. The *Danabandi* literally means a cursory survey or a partial measurement of field, or weighment of the crop, to ascertain the value of the crop and the amount of assessment. These proceedings which are antecedent to the final determination of the landlord's portion, give the name to the tenure itself. The *Danabandi* is made when the crops are yet standing on the fields and when they are almost ripe for cutting. A party consisting of a *Salis* (arbitrator) and Amin (appraiser) attended by the Patwari, Gomashta and other village amlas, go about in each field and appraise the produce in maunds. At first the *Salis* makes the estimate, but if the ryot is dissatisfied with the estimate, the *Amin* is referred to. The estimate having been once made everything is left to the ryot himself; the landlord or his Amla has then nothing to do with the standing crops. They are reaped and gathered by the ryot who may pay the zemindari portion of the estimated produce either in kind, or the price of this according to the price current, in cash. The Zemindar's share is usually either half or 9 ans. out of the 16 ans of the produce. The *Battaia dana* is merely a modification of the last mentioned method, the difference being that under this system the *Salis* and the *Amin* do not go to the field to appraise the out-turn but the landlord's amla and the ryot come to an understanding about this at a sitting in the zemindar's cutchery.

The Behar Landholders' Association pronounce the statement that the *Bhowli* ryot gets nothing but the bare land, to be wholly erroneous. The fact is that in more than one particular, the *Bhowli* ryot in Behar receives substantial assistance from the landlord in producing the crop; thus the landlord pays for the *gilandazi* (earthworks); he constructs *bunds*, excavates *Pynes*, buys water for the rice crop where it is necessary to buy such water from a neighbouring proprietor, digs tanks and wells and keeps the old ones in repair, pays for the construction and periodical repair of the field and village channels, and so for all arrangements for the proper drainage of the land. He has frequent dispute with the neighbouring proprietor with respect to some one or other of these matters and the cost of the litigation is entirely his. Thus the cost of all the material improvements of the land, so far as they are known and practised in India, falls on the landlord. The average annual expenditure under these heads, is not inconsiderable. In most agricultural villages, the house in which the ryot lives, is built at the expense of the landlord, and the ryot gets *bamboos* and sticks periodically, free of charge, to keep it in repair. He pays no *Maatakharfa* (ground-rent) for the site of his house or even for the house which the landlord constructs for him. He gets a portion of the *Sayer* (fruits, fishes, &c.) of the village without paying any rent for the same, At the time of the distribution of the crops, in addition to the *Nyari* (straws) —a valuable appanage to the paddy crop—the ryot receives all the *Poual* (hay) and *Bhusa* (husks) for use as fodder for the cattle employed in the husbandry. The grazing commons, the pasture lands of the vil-

lage, are in the ryot's use, free of rent. The landlord thus bears the burden of feeding the cattle. In bad years, which are more common than good ones, the ryot receives a *Tuccavee* advance from the landlord for purposes of cultivation. Under *Agorbattia* system, the landlord furnishes the *Agora* (watchmen) to watch the crops, and he alone pays the wages of these men. Again under the *Bhowli* system the landlord gets only his share of the actual out-turn of the quantity of land which the ryot cultivates. Suppose, the ryot holds 100 bigahs and he cultivates only 50 begahs. The zemindar gets for his share the produce of the 50 bigahs only; and he prefers no claim for rent for lands which are left uncultivated. Damage suit under this head is unknown in Behar, and though this condition of things may at times lead to forcible ouster in cases where the zemindar sees that the ryot leaves his land intentionally and negligently uncultivated, in the majority of cases the zemindar acquiesces in this state of things without a grumble, and the *Bhowli* tenant is as much secure in the possession of his holding as the Metayer tenants are in Continental Europe. *Bhowli jamabundis* show the variations from year to year, of the actual quantity of land from which the zemindar receives his rent. A variety of circumstnnces which do not at all affect the zemindar's rent-roll under a *Nukdi* system, raise or diminish the amount of the landlord's rental under a *Bhowli* system; so that if to use the words of the Report 'enhancement on the ground of increase is a stern reality to the ryots of Behar,' it is also no less true, that diminution of rent on the ground of vicissitudes of season and various other causes is a stern reality to the landlord in this province; and the landlord can only keep his own by prudently managing to counterbalance his loss in one year by his gain in the next.

Compare this with the case of the Metayer tenancy in Continental Europe. In Champagne the landlord commonly finds half the cattle and half the seed, and the Metayer, labor, implements, and taxes; but in some districts the landlord bears a share of these. In Roussillon, the landlord pays half the taxes; and in Guienne, from Auch to Fleuran, many landlords pay all. Near Aguillon, on the Geronne, the Metayers furnish half the cattle. At Nangis, in the Isle of France, the landlord furnishes live stock, implements, harness, and taxes: the Metayer finds labour and his own capitation tax: the landlord repairs the house and gates; the Metayer the windows: the landlord provides seed the first year, the Metayer the last; in the intervening years they supply half and half. In the Bourbonnois the landlord finds all sorts of live stock, yet the Metayer sells, changes, and buys at his will; the steward keeping all account of these mutations, for the landlord has half the product of sales, and pays half the purchases. In Piedmont, the landlord commonly pays the taxes and repairs the buildings, and the tenant provides cattle, implements, and seed.

The facts mentioned by the committee of the Behar Landholders' Association are very important. They shew how imperfect has been the enquiry of the Rent Commission. They would not have committed grave errors of fact if they had made local enquiries and taken evidence as a Royal Commission in England would do. Hence the general complaint that the report of the Commission is theoretical and one-sided.

XXI.

IN ALL attempts at legislation on the Rent question after the tide had set in against the Permanent Settlement the greatest stress has been laid upon the reservation in Regulation I of 1793, which it is assumed gives the Government full latitude to drive a coach and four through the Settlement Regulations. That reservation runs as follows:

"It being the duty of the ruling power to protect all classes of people and more particularly those who from their situation are most helpless, the Governor General in Council will, whenever he may deem it proper, enact such Regulations as he may think necessary for the protection and welfare of the dependent talookdars, ryots, and ryots and other cultivators of the soil; and no zemindar, independent talookdar or other actual proprietor of land shall be entitled on this account to make any objection to the discharge of the fixed assessment which they have respectively agreed to pay."

Babu Ashutosh Mookerjee in his scathing article in the *Calcutta Review* on the Report of the Rent Commission contends that the power reserved in Clause I, Section 8, Regulation I of 1793 does not justify interference with the rights of the landholders. He writes:

But a short and conclusive answer to any interpretation of this reservation, which goes to the extent of contending that it justifies interference with the proprietary rights of zemindars, is furnished by Regulation II of 1793. The preamble of that Regulation after reciting that the property in the soil has been vested in the landholders and that it is expedient to erect Courts of Judicature presided over by Judges, "who from their official situations and the nature of their trusts, shall not only be wholly uninterested in the result of their decisions, but bound to decide impartially between the public and the proprietors of land and also between the latter and their tenants," concludes with these memorable words:—

"NO POWER WILL THEN EXIST IN THE COUNTRY BY WHICH THE RIGHTS VESTED IN THE LANDLORDS BY THE REGULATIONS CAN BE INFRINGED, OR THE VALUE OF LANDED PROPERTY AFFECTED."

In reviewing this part of the article under notice we remarked in our issue of the 1st November last: "The Legislature undoubtedly possesses the power of enacting laws for the protection and welfare of all classes of the subjects of the State, and its obligation to protect the ryots, the most helpless class, from the oppressions of the zemindars, is certainly paramount, but that does not imply that it should deprive the landholders of their vested rights. If the authors of the Permanent Settlement had any such nefarious intention, they would not certainly have declared in the very next Regulation that "no power will then exist in the country by which the rights vested in the landholders by the Regulations can be infringed, or the value of landed property affected." The two declarations ought to be read together and they are perfectly reconcilable. It is one thing to protect a class from oppression and another thing to deprive another of vested rights. It affords us not a little satisfaction to observe that the interpretation, which we have put upon the reservation clause, had been given to it by no less an authority than the Court of Directors about sixty years ago. On referring to the old East India records we find a despatch from the late Court of

Directors to the Governor General in Council dated the 12th July 1820, in which in urging the necessity of making Kanongœs and Patwaris dependent upon the Collector, incidentally gave their opinion upon the reservation clause. We give the passages entire:

Your objections to place the putwarry in dependance upon the Collector are, that this would be a change of system, that the zemindars would be offended, that it would be inconsistent with the spirit of the Permanent Settlement, that the Collectors would be incapable of making a proper choice of Putwarries or of making them discharge their duties, and that a mode of paying them would not be easily found.

That it would be change, is implied in the very idea of an evil to be removed or an advantage to be gained; but we are by no means of opinion that it is a change, the inconvenience of which would not be overbalanced by the attainment of the end we have in view.

We expect that the zemindars will be offended by any plan we can adopt which will deprive them of a present advantage, whether derived from defrauding the Government or oppressing the Ryots. It is the loss, rather than the mode of losing by which they will be irritated. In the mode by us proposed, we see nothing peculiarly calculated to act painfully upon their feelings.

That it is contrary to the spirit of the permanent settlement to make the Putwarries dependent upon the Collectors, or to take any other measures that may be necessary for protecting the Government from the frauds, and the Ryots from the oppression of the zemindars, we cannot possibly admit, we cannot, indeed, forbear expressing a considerable degree of surprise, that you should have entertained such an opinion. *You know that, in enacting the perpetual settlement, Government reserved to itself (that of which no Government can lawfully divest itself) all the powers necessary for maintaining justice between one class of its subjects and another.*

The italics are ours and the words italicised contain the interpretation we refer to. It will be seen that the construction of the Court of Directors entirely coincides with that which we have ventured to give We had not read this despatch when we wrote on the subject. It is remarkable that the Court of Directors, who were by no means friendly to the zemindars, should have admitted that under the reservation made the Government had simply affirmed its paramount duty of "maintaining justice between one class of its subjects and another." This no one can have the hardihood to deny. It is the duty of every constituted Government to protect its subjects and to secure a proper and efficient administration of justice. But this object should be attained by rigid enforcement of the laws, and not by divesting any one class of its subjects of its vested rights. This is a natural construction of the reservation clause, and coming as it does from the highest authority it ought to be held conclusive. It is not, therefore, at all surprising that the landholders should consider it a breach of faith on the part of Government, if it should interfere with their rights guaranteed by the Permanent Settlement Regulations.

XXII.

THE Rent Commission have greatly complicated the question of enhancement of rent. In the first place they propose that in any case in which tenures and under-tenures may be liable to enhancement it may be enhanced up to the limit of the customary rate payable by persons holding similar tenures or undertenures in the vicinity, or, where no such customary rate exists, up to such limit as to the Court shall appear fair and equitable but so that the profit of the tenure-holder or undertenure-holder shall not (in the absence of certain special circumstances) exceed thirty per centum of the balance, which may remain after deducting from the gross rents payable to him the expenses of collecting such rents. With regard to *jangalbury* holdings they suggest that, when more than one hundred bigahs of land have been demised for reclamation purposes, more than half being at the time unreclaimed, and the whole having been subsequently reclaimed, the rent of the tenant may not be enhanced so as to leave him a profit of less than twenty per cent. of the net balance abovementioned, and the Court may allow him such profit in excess of twenty per cent. as to it appears fair and equitable. They further recommend that, in the absence of an express contract to the contrary, every tenure-holder and undertenure-holder shall be liable to pay additional rent for land gained by alluvion, and shall be entitled to abatement of rent for land lost by diluvion. The above rules are quite arbitrary. There is no reason why one class of tenure-holders should be allowed 30 per cent. profit and another class 20 per cent. The settlement of rent between the superior landlord and the tenure-holder ought to be left to mutual agreement, and in case of dispute the rule contained in Section 8, Regulation V. of 1812, which authorizes ten per cent. allowance to the tenure-holder, ought to apply. If a proprietor in a permanently settled district did not accept the settlement, he was declared entitled to only 10 per cent. *malikana*. The same allowance is given to any recusant proprietor in a temporarily settled district. Why should a tenure-holder be treated exceptionally? We are sorry to observe that the Government of Bengal in its letter to the British Indian Association has not touched upon this point. Perhaps the Lieutenant-Governor does not accept the principle recommended by the Rent Commission on this point.

With regard to grounds of enhancement the Commission have retained the existing law with some modifications, which we fear will tend to complicate matters. The grounds of enhancement as modified by the Comission stand thus:

(1) that the rate of rent paid by such ryot is below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages *in the vicinity*;

(2) that the quantity of land held by such ryot has been *shown* by measurement to be greater than the quantity for which rent has been previously paid by him;

(3) that the productive powers of the land held by such ryot *as compared with such powers at the time when the rent was fixed, or at any subsequent time,*

have increased otherwise than by the agency or at the expense of the ryot *and from causes not merely temporary or casual*;

(4) that the *prices* of produce *in the locality, or at the usual markets, as compared with similar prices at the time when the rent was fixed or at any subsequent time*, have increased otherwise than by the agency or at the expense of the ryot, *and from causes not merely temporary or casual.*

The present law is already unworkable, and suits for enhancement of rent consequently come to a dead-lock. Grounds nos. 3 and 4 will require an amount of enquiry and information, which will by no means facilitate matters. The explanations and illustrations will aggravate the difficulty. If as the Lieutenant-Governor proposes there should be a table of rates for different classes of land, enhancement ought to be allowed upon the first two grounds according to the table to be sanctioned by the Board. The last two grounds ought to be omitted. We wish the Lieutenant-Governor had also spoken out on this point.

Then we do not think that the double machinery of the Collector and the Civil Court would be at all convenient or expeditious. The Commission have classified under two heads the landlords who shall be entitled to go to the Collector and the Civil Court respectively, *first*, landlords having a permanent transferable interest; *second*, landlords having a farming or lease-hold interest in the lands of which the rents are payable to them. The Commission remark;

"Regarding the Collector's tribunal as an increased facility for enhancement, we have thought it inexpedient to afford this increased facility to landlords of the second class in every case. We have accordingly allowed landlords of the first class only to go to the Collector with cases depending upon the *first* and *second* grounds of enhancement, while we have left the Civil Court open to both classes for these cases. The landlord of the first class may go to either tribunal on the *third* ground of enhancement, but the landlord of the second class, the mere farmer or lease-holder, though the Civil Court is open to him in all cases, may not call in the agency of the Revenue Authorities, unless a period of not less than ten years of his interest remains unexpired. Upon the *fourth* ground the Civil Court is open to neither class of landlords; but he, whose interest is permanent and transferable, may always go to the Collector, while the farmer or lease-holder may not proceed before this Officer or in other words may not enhance rents at all upon this ground unless a period of not less than ten years of his interest is unexpired."

As the fiscal agency will be charged with the preparation of tables of rates, we think it would be preferable if the trial of suits for enhancement of rent were left to the Revenue Courts. Their practical knowledge will be of material help to them in deciding questions connected with the enhancement of rent. The double machinery recommended by the Commission will make confusion worse confounded.

XXIII.

THE primary motive of the Rent-law agitation was simplification of the procedure for the trial of rent-suits. It is thus set forth in the letter of the Government of Bengal to the Government of India dated the

3rd April 1879, recommending the apointment of the Rent Commission: "The Lieutenant-Governor, it will be remembered, in view of the loud and constant complaints put forward by the zemindars as to the difficulty under the present law of collecting even undisputed rents, was anxious to provide them at an early date with a reasonably summary procedure to enable them to overcome the passive resistance of their ryots, provided that the ryot's tenure was at the same time so protected and strengthened as to obviate any fear of their being made to suffer unduly in the process. It is found, however, almost impossible to frame a procedure which shall be perfectly fair to both parties, and yet afford such special facilities to the zemindar as he seeks to secure." The Government was under a pledge to pass a law for the speedy recovery of rent. When the Road Cess Bill was passed, the duty of collecting the cess was laid upon the zemindars; these protested against this fresh delegation because they said they could not collect their own rents speedily enough. Sir George Campbell, if we recollect aright, promised to help them in this matter by simplifying the law for the recovery of rent. But it was under his indirect encouragement the great difficulty arose in the Eastern districts in the collection of rent. He was succeeded by Sir Richard Temple, who after the Famine of 1873-74, applied himself energetically to the question of the Rent-law. He tried to solve it, but did not succeed. He simply passed the Agrarian Outrages Bill, which was an exceptional measure, and for the practical enforcement of which no necessity has happily arisen. In the meantime there was a change in the *personnel* of Government. Sir Richard Temple was succeeded by Sir Ashley Eden. It devolved upon Sir Ashley to pass the Public Works Cess Act. The duty of collecting the cess was again cast upon the zemindars, and the injustice of it was again protested against. The Lieutenant-Governor again promised to give them the necessary relief by amending the Rent Recovery Law. Three Bills were successively prepared for this purpose, but none of them seemed to satisfy the needs of the case. Then was formed the Rent Commission; as we have shewn in previous articles the Commission have recommended radical and revolutionary alterations in the substantive law, but strange to say they have been almost immobile with regard to the procedure for the trial of rent-suits. They say: "Chapter XVII contains certain special rules of procedure applicable to suits between landlords and their tenants or agents. It is declared (section 147) that, save where the Bill otherwise provides, *The Code of Civil Procedure* shall apply to all suits brought for causes of action arising between landlords and their tenants or agents; and (section 148, that the cause of action in all such suits shall be deemed to have arisen within the local limits of the jurisdiction of the Civil Court, which would have jurisdiction to entertain a suit for the recovery of the land in respect of which the relation of landlord and tenant or the agency exists between the parties. This latter provision proceeds upon the lines of the present law. We have retained the existing provisions as to *Sarbarakars* and *Tehsildars* suing and being sued, and have extended them to managers under the Court of Wards; but we have provided (section 149) that all such suits shall be conducted or defended in the name of the Secretary of State for India in Council, or

in the names of the private persons to whom the estates belong. We have also retained the provision of the existing law as to *Naibs* and *Gomashtahs*, if specially empowered thereto, acting as the authorized agents of their employers, although such employers are resident within the local limits of the Court's jurisdiction. We think that the facility thus afforded to landlords is a reasonable one which should not be taken away. At the same time we have thought it equally reasonable to provide in the interest of the ryots, that the service of any notice under the Act upon any such Naib or Gomashtahs, or the tender to him of any money or fee, shall be as valid a service or tender, as if the service had been made upon, or the amount or fee tendered to, his employer (section150)." So the ordinary proeedure is not materially altered. It is true that this procedure is abbreviated in certain cases. It will apply to such cases unless the District Judge otherwise directs. The following suits will come under this procedure: (1) suits for the recovery of arrears of rent; (2) suits for ejectment; (3) suits to recover possession of land; (4) suits for damages on account of the illegal exaction of rent or cesses, or on account of the refusal of receipts; (5) suits to compel the registration of successions to, or transfers of, tenures, undertenures or occupancy holdings. The points of difference between the Code of Civil Procedure and the abbreviated procedure are thus stated by the Rent Commission:

First.—The following portions of *The Code of Civil Procedure* do not extend to Rent Suits at all, viz. the sections relating to Discovery, Inspection, Interrogatories, and Affidavits; sections 380-382 as to Security for costs; sections 401,415 as to suits by Paupers; sections 430-434 as to suits by Aliens and by and against Foreign and Native Rulers; sections 470-476 as to Interpleader: sections 503-505 as to Receivers; sections 506-526 as to arbitration; sections 527-531 as to proceedings on the Agreement of parties; sections 532-538 as to Negotiable Instruments; and section 529 as to Public Charities.

Secondly.—The summons is to be in all cases for the final disposal of the suit, which is ordinarily to be disposed of at the first hearing—(section 173). We have laid down (section 188) precise rules as to the cases in which an adjournment may be allowed. To deny an adjournment would be in some cases tantamount to a denial of justice, but such cases are exceptional; and if the Subordinate Courts will do their duty and District Judges see that they do it, we are satisfied that over 90 per cent. of Rent Suits can be properly disposed of at the first hearing.

Thirdly.—No written pleadings are required, save that the defendant may, if he desires, file a written statement of his defence—(section 184).

Fourthly.—We have provided (section 190) that the Court shall upon the day of hearing ascertain from each party whether he admits or denies the allegations of fact and the documents of the opposite party, and shall record such admissions or denials. We believe that this course will in very many cases considerably reduce the quantity of evidence that has to be taken, and in some cases do away with the necessity of taking evidence at all. It is too much the habit with Subordinate Judicial Officers to leave the case in the hands of the parties in its earlier stages, rousing their own attention fully only when they come to write their judgment. Facts and documents, which would be readily admitted at the first appearance before the Court, thus come to be strenuously denied, when the parties understand their bearing, are excited by the contest, advised by unscrupulous mukhtears and eager for victory regardless of the means

by which it is obtained. The proceedings are thus prolonged and the time of the Court wasted in taking evidence, which ought to have been unnecessary.

Fifthly.—We have provided (section 192) for making a memorandum of the evidence, sufficient to give the gist and substance of what is said, but requiring less time to record than if the whole of what each witness says were taken down at full length, as must be done under the provisions of *The Code of Civil Procedure* in all appealable cases. Any particular question and answer may, however, be taken down by the Judge, if he thinks fit—(section 193).

Sixthly.—We have enacted (section 169) that the Courts shall not add as a party a person setting up a title adverse to the plaintiff or defendant in respect of the subject matter of the suit; but any question of title, disputed between any such person and a party to the suit, may be decided in such suit as between the parties thereto, if the decision of such question is necessary to the proper determination of the suit. There is no greater source of delay in the dicision of rent suits than the raising of complicated questions of title and making the decision of the Court thereupon final and conclusive. Thus in a suit brought to recover a few rupees of rent, the title to property worth a thousand rupees may be litigated, to the great detriment of the stamp revenue. It sometimes indeed happens that the decision of such a question is necessary in order to the decision of the Rent Suits. Where this is the case, it may be tried and decided, but the decision will not be a bar to the formal trial of the same question under the provisions of *The Code of Civil Procedure*—(section 223.)

Seventhly.—We prppose to take away appeals in suits brought for arrears of rent, in which the amount claimed does not exceed *ten* rupees and in which no question of right to enhance or vary the rent of a tenant has been determined.

It will be seen from the above that the abbreviation of the procedure is not of material consequence. The bulk of the procedure is the same as now. Law's delay will not be avoided when there are so many loopholes left for legal technicalities. In fact the so-called abbreviation is a mere blind. The Commission, however remark: "If this procedure appears to any persons less summary than they could wish, and if on this account objections are advanced against it, we can only in reply state our earnest conviction of the extreme danger of summary methods of justice. In order that justice may be done, truth must be elucidated; and the elucidation of truth specially in this country, and for reasons which we need not here dwell upon in detail, requires time and patience. Any attempt to abridge judicial inquiry by arbitrary and abnormal presumptions in favour of either party, which by precluding the production of evidence may enable Judges to arrive at rapid conclusions, is to our minds retrogressive and unsafe." When the Rent Commission were fired by such notions as to the summary procedure their abbreviated procedure could not but be a mere mockery. We may, however, remark that the new Bill may as well be thrown into the bottom of the Hooghly, if the procedure be not simplified. We will consider the details hereafter.

XXIV.

In our issue of the 10th instant we discussed the abbreviated procedure recommended by the Rent Commission. This procedure we fear will not make much practical difference. In the first place the Commission state that certain sections of the Civil Procedure Code will not apply to the trial of rent-suits, such as relating to discovery, inspection, interrogatories, and affidavits, security for costs, pauper suits, suits by aliens and by and against foreign and native rulers, interpleader, receiver, arbitration, agreement of parties, negociable instruments, and public charities. Many of these sections would not *ipso facto* apply, and the Commission might have spared themselves the trouble of excepting them formally. Then again there are some sections, which might well have been retained. For instance the sections relating to security for costs, arbitration, and agreement of parties ought to have been included in the abbreviated procedure. In the second place the summons is to be in all classes for the final disposal of the suit, which is ordinarily to be disposed of at the first hearing. But this provision is practically nullified by the clause for adjournment. This clause (Section 188) says:

The hearing of the suit may be adjourned to a future day to be named in the order of adjournment in the following cases, that is to say—

(1) when either party is not present in person, and his Pleader or the person mentioned in clause (c) of section 172 is unable to answer a material question relating to the case, which the Court is of opinion that the party ought to answer and is likely to be able to answer, if present in person:

(2) when the Court, after proceeding as provided in Section 191, is of opinion that the parties are at issue upon some question upon which it is necessary to hear further evidence:

(3) when either party for sufficient reason, which shall be recorded by the Court, requires time for the production of evidence or for any other purpose.

In case (1) the Court, shall direct the party to appear on the day to which the hearing is adjourned. In case (2) the Court, shall frame an issue for trial at the adjourned hearing. In all cases the Court shall make such order as it sees fit with respect to the costs of the adjournment:

Provided that, when the hearing of evidence has once begun, hearing of the suit shall be continued from day to day until all the witnesses in attendance have been examined, unless the Court finds the adjournment of the hearing to be necessary for reasons to be recorded by the Judge with his own hand.

Under the first clause the defendant in order to gain time may absent himself, and the case will as a matter of course be adjourned. What will be the good then of the provision that the summons is to be in all cases for the disposal of the suit? Then, again, if under Section 190 the Court shall upon the day of hearing ascertain from each party whether he admits or denies the allegations of fact and the documents of the opposite party, and shall record such admissions or denials, why should there be an adjournment to take further evidence? If this discretion be left to the Court, there will be a tendency to adjourn for the purpose of taking further evidence, and the defendant is sure to take advantage of it. The Commission justly lay great stress upon the provision of Section 190, which enjoins the record of admissions or de-

nials at the hearing and they remark: "We believe that this course will in very many cases considerably reduce the quantity of evidence that has to be taken, and in some cases do away with the necessity of taking evidence at all. It is too much the habit with Subordinate Judical Officers to leave the case in the hands of the parties in its earlier stages, rousing their own attention fully only when they come to write their judgment. Facts and documents, which would be readily admitted at the first appearance before the Court, thus come to be strenuously denied, when the parties understand their bearing, are excited by the contest, advised by unscrupulous mukhtears and eager for victory regardless of the means by which it is obtained. The proceedings are thus prolonged and the time of the Court wasted in taking evidence, which ought to have been unnecessary." Quite true, but the discretion given in Section 188 to adjourn for further evidence will nullify Section 190. For our part we think the defendant ought to be called upon in answering the plaint to state whether he admits or denies the allegations of the plaintiff and what evidence and documents he relies upon. He should not be allowed to call in further evidence at a subsequent stage. Once a loophole is given to him, the suit will drag its slow length along in the usual way, and the abbreviated procedure will be one merely in name. In the third place the Commission state that no written pleadings are required, save that the defendant may, if he desires, file a written statement of his defence—(section 184.) But the option given will we fear be always availed of, and the so-called abbreviated procedure will defeat its own object. If a written answer be filed the cunning and chicanery of the Muktear will come into play. The untutored mind of a ryot defendant, questioned directly by the Court, in answer to the plaint, will make admissions or denials according to the actual facts of the case, and the Court will not be in much difficulty in arriving at the real truth at once. But once the defendant is taken in hand by the Muktear, he will go through processes, which will retard, if not defeat, justice. In this respect the procedure of the Presidency Small Cause Courts ought to be extended to the trial of rent suits. The fourth point we have already noticed in discussing the second point. In the fifth place the Court is required to keep memorandum of evidence. We think this provision may be dispensed with except in appealable cases. This course is followed by the Presidency Small Cause Courts. The sixth and seventh points call for no remark. From what we have said it will be seen that the abbreviated procedure will not materially simplify the trial of rent-suits. If the Court be so disposed, it may procrastinate as long as it likes on the plea of taking further evidence. The abbreviated procedure is not peremptory and therefore it will fail in its object.

So much for the procedure for the trial of rent suits. Then comes the question of execution of decree. At present a decree in a rent suit may be executed in the following manner, 1stly, by the arrest of the defendant before or after judgment, 2ndly, by distraint or attachment before or after, judgment, 3rdly, by the sale of goods and chattels of the defendant, and 4thly by ejectment. With regard to the first point the Commission state that they have substantially adopted the provisions

of Act X. of 1859 as to the arrest of the defendant before judgment (Sections 175 to 179); but they have not allowed such arrest in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent under the provisions of section 64. The defendant can be arrested only if resident within the district in which the Court is held, and if the Court is satisfied (*a*) that there are *prima facie* grounds for believing the claim to be well-founded, and (*b*) that if a summons be issued in the first instance such defendant will abscond. If an arrest be obtained on insufficient grounds, the defendant will be entitled to compensation. As regards the second point the Commission remark that they have extended to Rent Suits the provisions of *The Code of Civil Procedure* as to attachment before judgment. This attachment will in certain cases take the place of distraint. The Commission tack on this ryder on the subject. They state: "We have provided however, that in suits for arrears of the rent of a tenure, under-tenure or occupancy holding hypothecated for its own rent, there shall be no attachment before judgment unless the plaintiff can satisfy the Court that such arrears together with interest and costs, are not likely to be satisfied by the sale-proceeds of such tenure, under-tenure or occupancy holdings (section 180). We have enacted that standing crops and other ungathered products, which have been so attached, may, notwithstanding such attachment, be reaped and gathered by the defendant, and stowed in such granaries or other places as are commonly used by him for the purpose; and, if the defendant neglects to do so, the plaintiff may cause such crops or products to be reaped or gathered and may store them in such granaries or places or in some other convenient place in the neighbourhood." This attachment will, however, not at all meet the object of distraint. As to the sale of chattels or moveables the Commission observe: "The result of extending Section 266 of *The Code of Civil Procedure* to Rent Suits is that the following moveables cannot be taken in execution:—(*a*) the necessary wearing apparel of the judgment-debtor, his wife and children; (*b*) implements of husbandry and such cattle as may in the opinion of the Court be necessary to enable the judgment-debtor to earn his livelihood as an agriculturist; (*c*) the materials of houses and other buildings belonging to and occupied by agriculturists. It may be observed that these are not exempted from attachment in execution under the provisions of Act X of 1859, so that in those districts in which this Act is in force, judgment-debtors under decrees for rent are placed at a considerable disadvantage in this respect." Eviction is abolished, and the sale of the occupancy tenure is authorised. Sir Barnes Peacock once remarked that the difficulty of the judgment-creditor begins when the decree is given, but this difficulty of the rent-receiver is not removed by the Bill of the Rent Commission.

XXV.

THE Rent Commission lay great stress upon a Table of Rates for each district by the District Collector. In any case in which a landlord

may sue for enhancement of rent they provide that he must ask the Collector to prepare a *table of rates* for the estate, tenure or under-tenure, in respect of which the application is made. The Commission define a "Table of Rates" to mean "a table or schedule which exhibits the classes of land in an estate, tenure or under-tenure according to the classifications usual in the locality, and the rates of rent payable for each class." When enhancement is claimed on the first or second ground, prescribed in the Bill, such table must exhibit the prevailing rates payable immediately before its preparation; and, when enhancement is claimed on the third or fourth ground, such table shall exhibit such prevailing rates and shall further exhibit the enhanced rates allowed by the Collector upon such grounds respectively." The Commission would in the first place distribute the lands into different classes, thus, *suna* land, awal or first class, duim or second class, seyam or third class; *sali* land, awal or first class, duim or second class, seyam or third class, chaharam or fourth class. *Suna* land is the higher and better land, not liable to inundation, and produces *ous* paddy, pulses of kinds, potatoes, sugarcane, and indigo. *Sali* land produces *amun* paddy, sesame, moog and jute. There are, again, lands which are noted for particular products, such as lands on which bamboos are produced, on which fruit trees and vegetables are grown, on which mulberries are grown, on which betel leaves are grown, on which homesteads are built, lands known as udbasthu, that is to say lands adjoining homesteads, dobas or hollows used as small fisheries, ghaskur or pasture lands. The applicant having given his table of rates the next step will be for the Collector, according to the scheme of the Commission, to ascertain what the ryots have got to say in reply to it by issuing notices. If all the ryots accept the rates, the Collector will record the fact, and there is an end of the matter. If, on the contrary, the ryots or any of them object to the rates, it will be the duty of the Collector, to proceed to prepare a table of rates, which he finds to be fair and equitable. He will take such evidence and make such enquiries as he may deem necessary. If enhancement is claimed on the *first* ground, namely, that the ryots are paying a rate of rent below the prevailing rate payable by the same class of ryots for land of a similar description and with similar advantages in the vicinity, the Collector will ascertain the prevailing rates payable in the vicinity for classes of land similar to those in the estate, tenure or under-tenure, with which his proceedings are concerned. He will confine himself to this general point. If any particular ryot contends that he does not belong to the same class of ryots or that his land has not similar advantages with the class of lands, respectively, which are selected from the vicinity for comparison the Collector will decline to enter upon these individual questions. If upon the publication of the table of rates the applicant and the ryots are unable to settle matters between themselves, the applicant will have two courses open to him. He can proceed in the Civil Court to enforce the table of rates against the ryots individually, or he can ask the Collector to prepare a *Jamabandi*. In either of these proceedings the ryots will have a full opportunity of stating their individual cases, and having them duly considered. Similarly, if enhancement is claimed on the *second* ground, a separate

enquiry will be made in each case. If enhancement is claimed on th *third* ground, namely, that the productive powers of the lands held by the ryots have increased otherwise than by the agency or at the expense of such ryots, the Collector will have to ascertain the extent of the increase with reference to the terms of the law. Having ascertained this, he must then determine what rates are fair and equitable for these improved lands instead of the old rates. Finally, if enhancement is claimed on the *Fourth* ground, namely, that the prices of produce have increased otherwise than by the agency or at the expence of the ryot, the Collector must ascertain the extent of the increase with reference to the terms of the law, and dividing such increase between landlord and tenant, in equal moieties, must determine the new rates, which shall be fair and equitable. The procedure in the preparation of the Table of Rates will be as follows: "The Collector having prepared the Table of Rates will publish it with a notice intimating to the applicant and the ryots that any objections, which he or they desire to make to the rates, must be made within one month by a written petition presented to the Collector. If any such objections are made, the Collector will consider them and amend the Table, if he see fit. He will then submit the Table of Rates with his proceedings and any petitions of objection, that may have been presented, to the Commissioner, or through the Commissioner to the Board of Revenue. The Lieutenant-Governor may from time to time direct what cases shall be finally revised by the Commissioner or the Board, regard being had to the total amount of rents involved, or to the area of the lands or the number of the ryots affected. The Board or the Commissioner, as the case may be, may direct and await further proceedings or inquiries, may hear any person affected by the proceedings, may allow or reject any of the objections made, and may revise, amend, or alter the Table of Rates."

This is the scheme of the Commission. In our humble opinion it is a cumbrous procedure. It will involve much delay and expense, and what is worse it will not prevent litigation. Every individual ryot, if he likes, may contest the application of the table of rates to his own case. Thus there will be a prolonged and harassing litigation. In the first place there will be a good and tough fight up to the Board in the preparation of a table of rates. In the second place there will be again a prolonged fight in the application of the table of rates to each case. The Government, however, proposes to cut down this complicated procedure by appointing a Commission for the preparation of a table of rates for each district. We do not think it will be quite practicable. It reads well enough on paper that rates may be fixed according to the class of lands assessed, but the Government cannot be unaware that there are diverse circumstances which influence the determination of rent, and that the quality of soil cannot therefore be made the sole criterion. The same class of lands at two ends or sides of a village, we may say of a field, do not pay the same rate of rent, and a hard and fast rule inseparable from the preparation of a table of rates will not therefore be fair and equitable.

In order to simplify matters we have always been of opinion that it would be far better if the landlord's share of the gross produce of land

were defined by law. Both the landlord and tenant would then know their respective position, the former would know his exact right and the latter his exact liability. As for the produce of land, the average of different kinds of land and of different kinds of produce is well known. If there be any dispute it may be easily settled by a court on the evidence of neighbours or experts. Where the payment is in kind, one-fourth share can be easily effected, but as the payment is generally in money, a list of prices will be necessary. In order to facilitate the preparation of a table of rates the Rent Commission recommend that the Collector of every district shall prepare annual lists of prices, at harvest time of the staple crops appointed by the Board of Revenue for districts or other areas. These Price-Lists will be prepared under rules made by the Board in order to secure uniformity, and will be published annually in the *Calcutta Gazette*. They have declared that Price-Lists so published shall be relevant in any proceedings under Chapter XV, and shall be *prima facie* evidence of the price of such staple crops during the year, and in the district or area for which it has been published. We would recommend the same course for the preparation of price lists for settlement of rent under our plan. We would take the average of three years of both produce and price, and assign one-fourth of the same as the zemindar's share or rent. This share or rent once fixed should have a currency for ten years. We would not have a revision at a shorter interval, for we do not think it would be politic to disturb the minds of the ryots by frequent changes in the amount of rent payable by them individually. We are aware that our proposal of one-fourth share of the gross produce of the land as the equivalent of rent is not acceptable to many zemindars; this rate may not be quite adequate in the Western districts, where it ranges between one-half and one-third, but we are strongly of opinion that the ryot ought to be allowed a sufficient margin for cultivation and maintenance, and we are satisfied that if a higher rate or share be fixed for the landlord, it will trench upon the very means of subsistence of the ryot. We should add that one-fourth rate would be too high for many parts of the Eastern Districts, and there we would declare that at present the landlord shall not be entitled to claim more than double the existing rent.

XXVI.

AMONG the minor sections of the report of the Rent Commission is one relating to the law of limitations applicable to rent-suits. As the Commission point out, since 1859 there has been a special law applicable to these suits. Before the passing of the present general Limitation Act, XV of 1877, this special law differed in some important particulars from the general law:—Namely (1) Contrary to the provisions of the general Limitation Act, when the period of limitation expired upon a day upon which the Court was closed, no deduction of time was allowed and the suit might not be instituted on the day that the Court re-opened: (2) Contrary to the provisions of the general Limitation Act,

the time might not be deducted, during which a plaintiff was conducting with due diligence another civil proceeding founded on the same cause of action, and prosecuted in good faith in a Court, which from defect of jurisdiction or other cause of a like nature was unable to entertain it: (3) Contrary to the provisions of the general Limitation Act, no deduction of time was allowed for legal disability, *i. e.* minority, lunacy, idiocy: (4) Contrary to the provisions of the general Limitation Act, time was to be computed according to the English calendar: (5) By a parity of reasoning to that upon which the above propositions are based, the provisions of the Limitation Act, which in the computation of the time allowed for appealing permitted a deduction of the time necessary for procuring a copy of the decree and judgment of the lower court, had no application to Rent Cases, although this time was deducted upon the authority of a Circular Order of the Sadr. Court. Section 6 of the Limitation Act, (IX) of 1871, enacted as follows:—"When by any law not mentioned in the Schedule hereto annexed and now or hereafter to be in force in any part of British India, a period of limitation differing from that prescribed by this Act is specially prescribed for any suits, appeals or applications, nothing herein contained shall affect such law." Acts X of 1859 and VIII (B. C.) of 1869 are Acts not mentioned in the Schedule here specified, and it was accordingly held that nothing contained in Act IX of 1871 affected these Acts; therefore the rules as to the computation of the period of limitation contained in Act IX did not affect or apply to Rent Suits. Section 6 of the present Limitation Act (XV of 1871), corresponding with section 6 of Act IX of 1871, is couched in different language:—viz., "When by any special or local law now or hereafter in force in British India a period of Limitation is specially prescribed for any suit, appeal or application, nothing herein contained shall affect or alter the period so prescribed." It has been held (I.L.R 5 Calc. 110) that the effect of this change in the language used is, that the rules prescribed by Act XV of 1877 for computing the period of limitation are applicable—apparently on the ground that rules for computing the period of limitation do not affect the period itself. The Commission have enacted this decision in express terms. As to extension of time for disability the Commission are not in favour of it. They remark: "After due consideration we have come to the conclusion that it is inadvisable to extend to Rent Suits the allowance of time for disability. We think that a minor ought not to be competent on coming of age to sue a ryot for rent which had accumulated during the whole period of his minority; that this kind of debt, which a poor man usually discharges year by year out of the produce of the year, ought not to be allowed to accumulate; and that, if the manager of a minor's estate neglects his duty of realizing rent as they fall due, the minor's remedy ought to be an action for damages against such manager." We admit that there is much force in this argument. But there are suits analogous to rent-suits, we mean suits in which ryots are defendants, such as bond suits, suits for damages, and the like, and if the ordinary law of limitation applies to this class of suits allowing time for disability, we do not see why the rent-suits should be placed in a different category. There may be cases in which the ryot and the

manager may collude, and surely the former ought to be held as much liable as the latter. It is also observable that the new law will facilitate the deposit of rent by a ryot in court, and if he does not avail himself of the facility afforded by the law he ought to take the consequences.

The Commission have expressly extended to suits and applications under the Rent Law the following portion of the Indian Limitation Act XV. of 1877, namely, (*a*) the explanation to section 4, viz., that a suit is instituted in ordinary cases when the plaint is presented to the proper officer; in the case of a pauper, when his application for leave to sue is filed; and in the case of a claim against a company which is being wound up by the Court, when the claimant first sends in his claim to the official liquidator; (*b*) section 5 as to a suit or application, the period of limitation for which expires on a day when the Court is closed, being admitted on the day the Court re-opens; and as to an appeal or application for a review of judgment being admitted after the period of limitation, when the appellant or applicant satisfies the Court that he had sufficient causes for not presenting it in time; and (*c*) the whole of Part III relating to the computation of the period of limitation. The Commission have also introduced an important provision to the following effect that when the result of litigation between any persons is such that they are found to stand in the relation of landlord and tenant to each other and to have stood in this relation while such litigation was pending, but, until their mutual rights were finally determined by such litigation, such landlord was unable to sue such tenant for rent, the period of limitation for suing for any such rent shall be computed from the termination of such litigation. The Commission base their recommendation upon decided cases. In *Rani Sivarnamayi* vs. *Shashi mukhi Barmani*, &c. (12 Moor. In. Ap. 244; S. C. 2 B. L. R. P. C. 10) the facts were—A *zemindar* had brought a *patni* tenure to sale under Regulation VIII of 1819. The *patnidar* was thereupon ousted and the purchaser took possession of the *patni* tenure. The *patnidar* then successfully sued to have the sale reversed on the ground of irregularity, and recovered possession of the *patni* tenure together with mesne profits from the purchaser for the period of his possession. The *zemindar* subsequently sued the *patnidar* for rent for this period. Such rent was barred, if the period of limitation contained in Act X of 1859 were to be applied without qualification. The Privy Council, however, held that it was not barred—that the cause of action accrued at the time at which, the sale having been set aside, the obligation to pay this rent revived—that the *patnidar* on being restored to possession took back the estate subject to the obligation to pay the rent, and that the particular arrears must be taken to have become due in the year in which that restoration to possession took place. Two points are to be noticed here. *First*, the zemindar could not sue the patnidar for the rent as long as the latter was out of possession: *second* the *patnidar* received mesne profits for the period for which rent was claimed. From this case were distinguished some subsequent cases in which, although the landlord had denied the continuance of the relation of landlord and tenant and had attempted to put an end to such relation, the tenant was nevertheless

not dispossessed and there was in consequence nothing to prevent the landlord from recovering the rent. In these cases, although one element, viz., receipt by the tenant of the profits of the land, was present, the other element, viz., inability of the landlord to sue was wanting—(See I. L. R. 3 Calc. 6, 791, 817.)

The chapter on the law of limitation is thus fair enough. The provision we have taken exception to above does not, however, seem to us to be quite equitable. It is not, however, a matter of very great importance, for even if the amendment we have suggested be not accepted, the minor landholder will not be wholly without a remedy as he will have the right to sue the manager for damages.

XXVII.

THE RENT Commission draw attention to the evils of the joint management of estates. They remark that "when coparceners, or co-sharers, as they are commonly called, stand in the position of landlords, and manage their affairs either through a single member of the family (*karta*,) or through a manager appointed by, and acting for all, there is no difficulty and the tenants are put to no greater inconvenience than the tenants of other landlords. But when on the contrary the co-sharers are disunited and dissension prevails amongst them, their tenants are exposed to considerable harassment. The rent is payable to the co-sharers jointly, and properly upon their joint receipt; but each attempts to collect separately the share to which he conceives himself entitled; and the tenant, who would comply with all their demands, would find that he had to pay a considerable amount more than his actual rent. Then the servants and adherents of each co-sharer seek their own perquisites, and, in order to obtain these, delude the ignorant ryots, who are thus induced to pay more rent to one co-sharer than he is entitled to receive, or, for the purpose of manufacturing evidence, receipts are given for a larger share, while in fact less sums were paid than appear in these frandulent documents. Each co-sharer attempts to enhance the rents of his share, although no partition has been made; or each seeks to make a measurement, and rival *Amins* prepare *chitahs*, the entries in which are regulated by the gratifications which the ryots are able or willing to give them. Litigation ensues, and the tenants side with this co-sharer or that: they give evidence and earn brief gratitude from one party, undying hatred from the other. A riot takes place between the adherents of the opposite parties, and the Police appear on the spot to reap a rich harvest. The ryots are impoverished, cultivation thrown back, and distrust and dissension pervade the village." We admit these evils and are of opinion that a remedy ought to be provided for them. The Commission propose that rent payable to coparceners shall be paid upon the joint receipt of all such coparceners, or of a manager appointed by them or by the District Judge; and that all such coparceners must join as plaintiffs or be made defendants in any suit brought for the recovery of arrears of any such rent, other-

wise that such suit shall be dismissed with costs. In this case which constitutes the rule, the entire rent must be sued for. To this rule they recommend three exceptions. *Firstly*, when the tenant and one or more of several coparceners, with the consent of the other or others of them, have agreed that the share of rent to which such one or more coparceners is or are entitled shall be paid directly to him or them, such share may be so paid and recovered. Here all parties being agreed, no one can be endamaged. *Secondly*, when the tenant has usually paid to one or more of several coparceners without objection from the other or others of them, the share of rent to which such one or more coparceners is or are entitled such share of rent may be so paid and recovered. Here the tacit acquiescence of all parties in the arrangement may be regarded as equivalent to an agreement. *Thirdly*, when a coparcener is unable to obtain his share of the rent payable by a tenant in consequence of collusion between such tenant and the other coparceners, he may sue to recover his share of rent separately, and shall in such suit make such other coparceners defendants. They have further adopted the caselaw by enacting that a coparcener may not otherwise than conjointly with his other coparceners or through a manager (1) bring a tenure to summary sale, (2) measure lands in the occupation of tenants of the coparceners, or (3) enhance the rents of such tenants. As regards the appointment of manager the Commission provide that when coparceners, who jointly own an estate, tenure or under-tenure, disagree as to the joint management thereof, and in consequence there has ensued, or is likely to ensue, (*a*) inconvenience to the public, (*b*) injury to private rights, the District Judge may, upon the application in case (*a*) of the Collector, and in case (*b*) of any one having an interest in such estate, tenure or undertenure, direct a notice to be served upon the coparceners, calling upon them to show cause why they should not appoint a common manager. If the coparceners do not, within a month, show cause why they should not appoint a common manager, the District Judge may direct them to do so (section 65 of the Draft Bill). If they fail to obey this direction, the District Judge may either appoint a manager or direct that the estate, tenure or under-tenure be managed by the Court of Wards, if it is willing to undertake the charge. With regard to the initiatary power proposed to be given by the Commission we do not think that on the petition of a single person, who has interest in the estate, tenure or under-tenure, the whole machinery should be set in motion. Of course where the coparceners do not agree a manager ought to be appointed, and we would also give power to ryots to apply for the appointment of a manager. We would recommend that when one-third of the rent-paying tenants of a joint and undivided estate shall apply for the appointment of a manager, the judge shall entertain the application. The petition of such a large body of tenantry as one-third of the whole would be *prima facie* proof, that the management has been unsatisfactory, and the owners of the estate should thereupon be required to appoint a common manager within say six months from the date of the order of the Judge, in default of which the Judge shall make the appointment. But it cannot be desirable that the joint family should be kept perpe-

tually in the hands of the Collector, though they might afterwards come to an agreement to elect a common manager. In that view we would suggest that when the members of a joint family may agree among themselves to appoint a common manager, and will satisfy the Judge that they have done so, the estate ought to be released by him. Such a provision is the more necessary, inasmuch as there is no prospect of the release of a joint estate like that of a minor's estate under the Courts of Wards. In the latter case as soon as the minor attains majority, the estate is released, but in the former the joint family would naturally multiply, and the number of sharers will necessarily increase in course of years. If the mere fact of a family holding an estate in common tenancy gives the manager power to hold it under his management, then he must hold it on perpetually, and the unfortunate members of the family must forego the rights of property for ever. It is also observable that when a stranger is appointed manager of an estate, the members of the joint family to whom it belongs, will lose all opportunity of learning to manage their own affairs, and with it their position and prestige among their tenantry and indirectly in society. The coparceners will become mere annuitants, a position by no means agreeable to those who possess energy and independence of character. In order to obviate these disadvantages, we would recommend that where an estate may belong to a joint family and the sharers do not agree to the appointment of a common manager, the Judge in appointing a manager should always give a preference to a capable member of the family. Should the coparceners desire and should the Judge find more than one member capable of the work, he may change the manager every five years. Where fractions of shares are held by others in common with a joint family preference for management ought to be given to those shareholders, who hold the bulk of the property, provided there be a qualified person among them, and failing them a representative of the minor shares. Where, however, a capable member may not be found, the Judge should of course appoint a third person as manager. If in cases of small estates, it may not be practicable to find a manager from among the members of the family, it is desirable that the management of small estates should be vested in some Government officer holding office in the neighbourhood of that estate, in addition to his regular duties on a small commission. In some cases a common manager may be appointed for a group of estates if conveniently situated. As regards the powers of the manager, we hope he will not be armed with the power of alienating permanently or for a long term the lands, or of conferring rights on tenants to the detriment of the owners of the property. As the management of joint undivided estates circumstanced as above will practically rest with a responsible officer appointed by Government, it is but fair that these estates should be exempted from the operation of the Sale-Law for the realization of Government revenue. It will be the manager's duty to see that the revenue of the estate is paid in regularly. Sir George Campbell, who first drew attention to this question, was prepared to make this concession.

XXVIII.

THE Rent Commission notice at length the subject of the registration of transfers of tenures and under-tenures in the sherista of the superior landlord. They state that since the earliest times a record has been kept in the Collectorate of the transfers of revenue-paying estates, in order that Government might be apprised as to who is the person for the time being liable to pay the revenue. When *putni* tenures were created, their incidents were in many respects assimilated to those of revenue-paying estates. Act X of 1859 required all dependent *talukdars* and other persons possessing a permanent transferable interest in land intermediate between the zemindar and the cultivators to register in the sherista of the zemindar or superior tenant, to whom the rents of their *taluks* or tenures were payable, all transfers of such *taluks* or tenures or portions of them by sale, gift or otherwise, as well as all successions thereto and divisions among heirs in cases of inheritance. The zemindar or superior tenant was further required to admit to registry, and otherwise give effect to all such transfers when made in good faith, and all such successions and divisions, and, if he refused to do so, an application could be made to the Collector who was empowered to enquire, and if he saw fit, make an order for registration. Act VIII. of 1869, B. C. reproduced these provisions, but it gave no power to the Collector to compel the zemindar to register such transfers. The Commission in their Draft Bill propose that every succession to, or transfer of, a tenure or undertenure or any portion thereof, or of an occupancy holding shall, whithin three months after such transfer or succession, be registered in the sherista or Rent-office of the landlord to whom the rent of such tenure, undertenure or occupancy holding is payable. The landlord is required to admit to registry and otherwise give effect to every such transfer or succession, but no landlord is required to give effect to any division or distribution of the rent, nor shall any such division or distribution be valid against him without his consent in writing. They have defined the term "transfer" to mean a transfer by private sale, gift, or exchange, or by sale in execution of a decree; and have defined "succession" to mean devolution by will or by inheritance. They have declared the landlord entitled to a fee upon every registration of a transfer or succession, such fee to be two per centum of the annual rent, but not to be less in any case than one rupee, or more than one hundred rupees. They have provided that in every case of transfer not being a transfer by sale in execution of a decree, the transferrer shall cease to be, and the transferree shall become, personally liable for the rent from and after the date of application for registry. This applies to cases of private transfer, which must be known both to be transferrer and the transferree, who thus have it in their power to regulate their liability for the rent falling due subsequent to the transfer. If no application is made for the registration of the transfer, the transferrer remains liable for the rent, and the landlord is not bound to recognize the transferree. When the transfer is by sale in execution of decree for arrears of the rent of the tenure, undertenure or occupancy holding, the transferree or purchaser becomes liable for the rent from

the date of the confirmation of the sale by the Court. The consequence of non-registration of a private transfer is, that the former tenant is not discharged from his liability for the rent, and the landlord is not bound to recognize the transfer. In cases of transfer of a tenure or under-tenure by execution sale, and in cases of succession, the Commission provide that, if application is not made for registration within three months, the landlord may attach the tenure or undertenure and collect the rents, for any surplus of which over and above his own head-rent and the collection-expenses he is, however, liable to account. The attachment may be continued until the transfer or succession is registered, and, if the collections are insufficient to discharge the head-rent, the superior landlord may bring the tenure or undertenure to sale. If after the sale there is still a deficiency, he may proceed to make the transferree personally liable. As regards succession to occupancy holdings and their transfer by execution sale the Commission propose to allow the landlord to attach the holding, when registration has not been applied for within three months, and cultivate it or let it for cultivation. If registration is not applied for before the expiry of the year next ensuing after the succession or transfer, they have provided that the holding shall be at the absolute disposal of the landlord. They think that, if the person succeeding or purchasing takes no steps to effect registration for more than a year, this may reasonably be taken as an abandonment of the holding, The Commission provide that application for registration shall be made within three months after the date of the succession or transfer, and in this case the fee, to which the landlord will be entitled upon registration, is two per centum of the annual rent. If registration is not applied for within three months, the defaulter shall be liable to a penalty of ten times the ordinary fee, subject however to a minimum of ten rupees and a maximum of one thousand. The same rule applies to an occupancy holding after the three months and before the expiry of the year next ensuing after the succession or transfer by execution sale. Where a landlord without just cause refuses to register a transfer or succession, the Commission provide for a civil suit to compel him to do so; and, if pecuniary loss has resulted from his refusal, the Civil Court may award damages to the person injured. They further state that the Board of Revenue may prescribe for any class of landlords a form of Register of successions to, and transfers of, tenures, under-tenures and occupancy holdings; and that, when any such form has been prescribed, every person concerned in any such succession or transfer shall be entitled to a copy of the entry relating thereto on payment of a fee of four annas. Having regard to the large number of petty landlords in these provinces, they do not prescribe this Register for all landlords generally while in large estates such a Register may be maintained with most of the advantages of a Court Roll in an English Manor.

We approve of these provisions generally. We consider it of the utmost importance that there should be a complete registration in the zemindar's *sherista* of the tenures, under-tenures, and occupancy holdings comprised in his estate. As the draft bill of the Commission stands, there will be we fear some difficulty about the registration of

occupancy holdings. The Bill recognizes the growth of an occupancy tenure within an occupancy tenure. Now, the question is whether an occupancy tenure of the second degree will come under the registration clause? The sub-tenant of an occupancy tenant is not recognized by the superior landlord, and is the latter to be bound to register mutation of name of a sub-tenant? The occupancy tenure of the second degree may not be transferable by private sale, though the Bill is not clear upon this point, but it will doubtless be transferable by sale in execution of a decree as well as by gift and inheritance. In that case will such transfer be held admissible to registration in the sherista of the superior landlord? As regards the growth of an occupancy right within an occupancy tenure, we are opposed to it, and the omission of the provision will remove the difficulty under notice. The Commission, we observe, make a distinction between tenures and under-tenures, and occupancy holdings in case of default. In the first-mentioned case the tenures and under-tenures may be attached, in the last-mentioned case the occupancy holding may be attached, but after a year may be resumed by the landlord. We think this provision ought to apply to all cases alike, for then the holders of tenure and under-tenures would have an active incentive to the registration of transfer. The enforcement of the penalty for non-registration should of course be made under order of court, but it should be made as summary as possible. We think that there ought to be a provision to the effect that the superior landlord shall not be bound to recognize any division of a tenure or holding made without his consent, nor to admit to registration any tenure or holding below a certain minimum area.

XXIX.

THE Rent Commission recommend some special provisions regarding Merger. They say whether the doctrine of Merger applies in the Mofussil is a question upon which the decisions of the highest tribunals are not of one accord. Any doubt as to the state of the law on a point like this is certain to create litigation, which can be prevented by making the law clear and indubitable. In a country where there are so many interests intermediate between the zemindar at the top and the cultivator at the bottom, it is specially important that it should be known exactly what consequences ensue when the zemindar or the owner of any intermediate interest acquires the interest immediately subordinate to his own. They accordingly provide that when by purchase at a private or public sale, or by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and extinguished by the fact of the same person being owner of the estate and the tenure. The same provision is made applicable to the owner of any superior interest acquiring the interest immediately subordinate thereto. They have here followed the principle of equitable Merger which is governed

by the intention (if it be a just and fair intention) of the person in whom the two interests unite, and by the purposes of justice. They state that "having regard to the frailty of oral evidence in this country, we have, however, cast upon the person in whom the interests meet the burden of showing an intention to keep them separate by producing a duly registered deed declaratory of such intention, and by proving that a copy of this deed was published upon the land included in the tenure or undertenure." This evidence of intention is required when three months have elapsed from the date of the Merger. This interval will afford sufficient time for consideration and for the execution of the deed in those cases in which it is decided to prevent the Merger. They further provide that there shall be no Merger when the superior interest belongs to several caparceners, some but not all of whom acquire the interest immediately subordinate. They recommend that the presumption of Merger shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind. As the presumption is made to depend upon intention, it cannot reasonably have effect until the person, in whom the interests meet, is capable of a legal intention. It would be inequitable that, apart from the provisions of law as to the avoidance of incumbrances by the sale of a tenure or under-tenure for arrears of its own rent, persons having a lien upon the inferior interest, or holding as tenants under the former owner of such interest should be prejudiced. They have accordingly provided for the protection of such persons and their rights.

The clearing up of the doubt referred to by the Commission is certainly necessary. The main provision made by the Commission is as follows:

When by purchase at a private or public sale, by gift, succession, or will, the proprietor of an estate becomes the owner of a tenure in such estate, such tenure shall, unless such proprietor can show that he had a contrary intention, be presumed to be merged in the proprietary interest and to be extinguished by the fact of the same person being owner of the estate and the tenure, subject, however, to the following conditions:—

1. Such person must be owner of the estate and the tenure in the same right and at the same time.

2. The presumption shall not arise in the case of a minor until he becomes of full age, or in the case of a person of unsound mind until he becomes of sound mind.

3. Such merger shall not operate to the prejudice of any person having a lien upon such tenure or of any undertenure-holder or ryot.

4. Subject to the provisions of the law for the time being in force relating to sales of land for arrears of Government revenue, and subject to the provisions of this Act as to sales for arrears of rent without, or in execution of a decree, such proprietor shall have the same rights and be subject to the same liabilities which the previous holder of such tenure, had or was subject to, in respect of those persons between whom and such tenure-holder the relation of landlord and tenant existed: provided that when, in the case of two or more persons being coparceners, one or more but not all of such persons becomes the owners of a tenure in such estate, no merger shall take place.

The provision about declaration of intention and notification of the

same is we believe calculated to set doubts at rest, but we fear the provision will be more honored in the breach than in the observance thereof. Practically few proprietors will take the necessary step of filing a declaration of intention. Then we do not see the good of binding the minor to make a declaration when he attains majority or a proprietor of an unsound mind to do the same, when he becomes sane. The manager of such disqualified proprietor ought to be able to exercise the discretion vested in the proprietor, as he is responsible for the general management of his estate.

With regard to the application of the doctrine of Merger to Government the Commission remark: "The difference between *Revenue* and *Rent*, which was not always present with sufficient clearness to the minds of those charged with the earlier administration of these provinces, has of late years been very distinctly realized by most persons concerned with the subject. This difference, though discernible in the abstract, is not, however, equally manifest in the particular instance, when we come to cases in which the paramount title belonging to the State and carrying with it the right to receive the *revenue*, and the proprietary title carrying with it the right to receive the *rent* have met in the person of Government. Do the two titles continue to co-exist, each preserving its own incidents? Or is one, and, if so, which of them, swallowed up and lost in the superior essence of the other? In other words, do the tenants, after the two titles have come into the hands of Government, pay *rent* or *revenue*? The settlement of the question is important, not merely as regards the mode of recovering arrears, but as regards other important interests. We have provided in Section 45 that it is and always has been the law, that, when the Secretary of State for India acquires an estate by purchase or otherwise the proprietary interest is merged in the paramount title. We have endeavoured to guard this provision so as to prevent injury to the rights and interests of third parties; and we have saved the operation of Act VIII. (B. C.) of 1879, which defines and limits the powers of Settlement Officers, and also the operation of the Public Demands Recovery Act."

A question, however, arises as to whether the Government should have a double-barrelled gun in this matter, that is to say, whether it should have the right to recover revenue under the sunset law as well as under Act VIII. of 1879. This point is not clear. We are of opinion that the recovery of revenue in cases of this kind ought to be regulated by Act VIII. of 1879.

XXX.

THE question of enhancement of rent is certainly the most difficult question connected with the Rent Bill. The Rent Commission ask the question—can a single uniform rule be laid down for enhancement? and they answer it in the negative. They remark: "The subject has been fully considered by able and practical minds upon more than a

single occasion; and none of these deliberations has produced any simple, practicable, rule which, applied to all conditions and under all circumstances, will afford satisfactory results. In taking up the question anew, and seeking for such a rule, we have examined all that has been done by those who have preceded us in the quest, and we have made what further search we could in the light of their knowledge and experience; and the ultimate conclusion at which we have arrived is that no such rule can be devised or formulated. It would of course be possible to lay down some rule, which, like Draco's Penal Code, might be embodied in a single section and apply to all cases; but, when it came to be put into operation, it would work so much injustice to both parties that each would be equally eager for its repeal." We are really surprised to observe that a uniform rule for enhancement should be considered by the Commission to resemble Draco's Code. The arguments, which they adduce in support of their position, are thus summed up: "The uncertainty of agricultural experience is very great in every country, but probably in no country is it so great as in India This increases the difficulty of providing against fluctuations of season by average calculations; and the consequences of failure in those calculations is terribly aggravated through the absence of capital, by drawing upon which the agriculturist is in other countries enabled to tide over an abnormal succession of bad years, hoping to replace what is so consumed by increased energy when circumstances are more favorable. The fertility of land depends in India, as in other countries, upon the nature of the soil and subsoil: and there are in these provinces numerous varieties of both, well understood by the ryots. In settlement proceedings all over India, from before Akbar's time down to the present period, we find these varieties mentioned and taken into account. Some soils are cultivated with much less labour than others; and this is a very important consideration, where so much has to be done by manual labour, where the race of cattle which supplements the exertions of man is deficient in muscle and vigour, and where the absence of capital and the nature of the country prevent the introduction and use of more effective agency. The rich alluvial *chur* yields a bumber crop in return for the mere exertion of sprinkling the seed on its surface; while the stiffer soil of the higher *mats*, baked during the burning months when the heaven is as brass and the earth as iron, and scarcely moistened by the tardy rains, is with difficulty turned up by the straining oxen and the toiling ploughman to be ready in time for the rice seedlings, which one by one have to be planted out through the full expanse of every field." All these arguments, we submit, tell more in favour of a uniform rule for determination of rent than otherwise. The history of rent in this country shows that the rule has always been to appropriate a fixed share of the gross produce of the soil as the *kheraj* due to the State, as the rent payable to the superior landlord. Whatever the nature of the soil, whatever its yield, if a share of the gross produce be fixed as equivalent of rent, that share will in the long run be just and equitable. It was on this principle that the rent of land had always been fixed in this country. It was the rule laid down by Menu, by the Mahomedan rulers of the country, and recognized by

early British rulers. It varied from one-fourth to one-half. The Commission remark: "If half the produce be given as rent, it makes an enormous difference to those who have to subsist on the remainder, whether the half of a hundred measures be given or the half of three hundred. Where the size of the holding is not limited by the amount of labour necessary for cultivation, it may be limited by the pressure of population and the extent of uncultivated land still available. Thus, similar results are produced by different causes. Then we have differences in situation almost infinite. Where rent is payable in money, part of the crop must be sold to obtain the coin with which the ryot may discharge his liability. If the mart is near, the labour and cost of carriage are inconsiderable, and the ryot can easily go to market when prices are most favourable; but these become a serious item, when the produce has to be carried over roadless plains and across unbridged *nullahs* to a distant and uncertain mart. Some fields are near the village and the threshing-floor, and no sooner is the crop ripe than it is garnered while others lie in a distant *mat* and their produce has to be carried on bullock's backs or men's heads, many an ear falling by the wayside to where it can be threshed and winnowed, and this, perhaps after the thieving birds and hungry cattle or it may be the wild hogs from the neighbouring *jungle* have sadly diminished the husbandman's profits, while he is waiting his turn for the busy oxen or the help of his neighbours. Here the water is deficient for the *amun* paddy, and there the *aus* is drowned by an unforeseen inundation. In one part of the country land is sufficiently plentiful to allow a fourth to lie fallow every year, while in another part the soil never gets rest, and there is no manure to keep up its strength, even the droppings of the cattle being collected and dried for fuel. In one *pergunna*, the adult population are healthy and strong to labour; in another, the climate is so bad that one-third on an average are down with fever and ague, and the remaining two-thirds in various stages of convalescence lack the physical vigour necessary to successful toil. In one district the cultivators of the soil have to support but one set of landlords; in another, they have half a dozen or even more, middle men under different names and with various rights having come between the zemindars and the ryots. These are some of the many causes upon which depend the numerous inequalities and variations in the subject-matter with which rent is concerned in these provinces. No simple rule of uniform application can allow for all these: and, unless they are allowed for and taken into account in individual cases, there cannot be fair and equitable rates of rent, for, in order to be really so, they must be fair and equitable in the concrete as well as in the abstract."

We submit that these objections are purely sentimental. All the inequalities noticed by the Commission, doubtless exist, but we are of opinion that if such a share of gross produce be fixed as would meet even extreme cases of hardship, the inequalities mentioned would not be practically felt. As in the case of the Income tax, whatever the rate fixed, inequalities will exist; for a person with an income of Rs. 1000 per annum will certainly feel the pressure of the tax more than he who has an income of Rs. 100,000, though the rate of taxation be

the same. But the question is whether the rate of tax fixed presses with undue severity upon the lower incomes. In the same way we should see whether such a share of produce might not be determined, as would leave the poorest cultivator enough for cultivation and subsistence. We think it could be so fixed, and if it could be, it would greatly diminish litigation and mutual irritation. The landlord would know, precisely what his own share is, while the tenant would know exactly his own liability. In that case it would not be necessary to prescribe grounds of enhancement, specified in the existing Act or in the proposed Bill by the Rent Commission, which would only invite dispute and litigation. If the Government really wishes to purge the courts of ceaseless litigation between the landlord and tenant and to promote peace and good will among the two classes, it ought to provide a uniform, fixed, and precise rule for the settlement of rent. We are willing to admit that the sovereign has always exercised that power, and that custom, which is a higher law than statutory law, has also been in favour of a fixed rule. Examine the rent system of any district, and you will find that at the bottom there has been every-where a rule of proportion according to which the landlord takes a portion of the produce as rent payable by the tenant. Of course it is difficult now to ascertain that proportion accurately, for when that proportion was fixed, payment was made in kind. Since the commutation of the payment into money the theory of proportion has been practically lost sight of. We are of opinion that it ought to be revived, and that a definite share of the gross produce should be fixed as an equivalent of rent. What that share should be is a fair subject for discussion.

XXXI.

WE LATELY commented on the Coparcenary chapter of the draft Bill of the Rent Commission. We observe that strong opposition is offered to this chapter by the East Bengal Landholders' Association. We have received a copy of a Note on the Bill recorded by the Association. Referring to the Coparcenary chapter the Association remark: "Coparcenary is an institution of the country. There are very few estates, tenures or under-tenures, which are owed and held by single individuals and not owned and held by coparcenars. In few cases only the coparcenars have joint management. Generally they collect rents and manage separately. There are also cases in which this is done in groups, by some coparcenars having joint collection and management separate from another group of coparceners. There are again those who have a very large share or interest in such coparcenary properties with persons who have only the smallest fractional shares. The blow that will be dealt against co-parceners by the provisions of this chapter, will reach all classes of such co-parceners and will be felt by all classes of landlords in the country. Instead of mending matters and instead of furthering the cause of peace, this chapter will be an instrument and a very dangerous one withal, to harass and virtually to ruin the

majority of landlords. This will be the easiest method of dispossessing them from their lands and vesting the management of all private landed properties in the State. It will virtually make them idle annuitants, depending upon the allowance given them by the Court of Wards or the manager appointed by the District Judge. It will most arbitrarily take away their independence and divest them of their just and inherent rights. In short, by embodying the mischievous principles of some rulings of the High Court, and by extending them further to subjects and cases not coming within their scope, and by re-enacting the provisions of a section of an almost forgotten and an almost obsolete Regulation half a century old, the Rent Law Commissioners have prepared an instrument which will bring about most harassing disputes and litigation, and encourage refractory tenants and even owners of infinitesimal shares to wreak their vengeance in a most wantonly manner." There are two points involved in this question, 1stly, harassment of ryots under joint management, 2ndly, injury to weak co-parceners. With regard to the first point the Association remark: "How the ryots are harassed it is difficult to understand. It is the duty of the ryots to pay their rents in proper time. If they pay up, no suit can stand. If the rent tendered by these is not accepted they can deposit the same. If they don't do either, they are to blame and they cannot find fault with the landlords for the suit or suits that may be brought against them. Yet if it is deemed necessary to protect the ryot from such apprehended harassment, provision may be made that in case of one suit by one sharer, the ryot would be entitled to deposit the whole arrears of his holding in case of decree, and notice of the deposit will be given to the other sharers at his cost. It may also be provided, as in exception 3, that in case of such separate suits, if the ryot can satisfy the court that the separate suits have been collusively brought by the sharers simply to harass the tenant when they could have brought one suit, the ryot will be entitled to get his costs." We must confess that the facilities offered for deposit of rent would tend greatly to mitigate the evil of harassment of ryots by a number of shareholders. If the rent is not received by any shareholder the ryot has only to deposit the whole amount in court. It is also observable, though the Association do not point this out, that in case of joint-management, where there is mismanagement, the ryot is more his own master than otherwise. He may now fraternize with this shareholder and now with that, and thus keep the other shareholders at bay. So that instead of being himself victimized, he may victimize his landlords. On the other hand the Association urge that the Coparcenary chapter will place in the hands of any refractory ryot a powerful weapon wherewith to deprive the landlords of their rights of ownership as regards management of their own property. The Association remark: "No provision has been made for an appeal against the Judge's order, and his order, however, unjust and arbitrary remains final and conclusive. Such are the provisions of section 65 which give the same power as was given by the old Regulation to any body and every body who has any interest, however trifling, in the land to create a revolution in its management, or at least to drag its numerous co-sharers in court and harass them for a great length

of time. By the wording of clause 2 of this section, the onus has been laid on the co-parcenars to show cause why they should not appoint a common manager. The notice calling upon the co-parcenars to show cause may be issued on the simple application of any person interested in the land in question. Nothing more need be done by the applicant. The whole burden is to be borne by the co-parcenars. Then, again, no provision has been made allowing an appeal against the order made by the Judge. There is also no appeal against the appointment of a manager nor against an order refusing his removal prayed for on sufficient grounds."

The Association do not touch upon the second point, *viz*, injury to weak co-parcenars. It not unfrequently happens that the more powerful co-sharer seeks to keep the weaker sharers under his thumb, and if they should shew any signs of independence to put them down with a strong hand. This complaint we believe is general. But it may be said that such co-sharers as suffer in this way should go to court in the regular way. But the court cannot help them much unless the parties move for partition, and partition, notwithstanding the facilities offered by Mr. Dampier's Butwara Act, is still a dilatory and expensive process. This subject deserves serious consideration.

XXXII.

FROM the time of the Permanent Settlement it has been the policy of Government to encourage the exchange of pottah and kabulyat between zemindar and ryot. It has been wisely held that many of the evils connected with the management of landed property in this country would disappear, if the exchange of leases were common among the landlord and tenant. The authors of Act X. of 1859 attached the greatest importance to the interchange of leases, and allowed both landlord and tenant to bring a suit for the enforcement of the same. The Rent Commission, however, seem to entertain a different idea on the subject, and would blot out contract, and leave every thing to custom. They remark: "The majority of the tenancies in Bengal and Behar depend upon custom rather than contract. However suitable a law requiring contracts of tenancy to be made in a particular form may be for a community in which the idea of contract, being early developed, rapidly permeated all classes, we think that it is not equally suited for a community over which custom exercises a powerful influence, whilst more admiration is accorded to the ingenuity with which a contract is broken, than to the honesty which respects its binding force. The Legislature of 1793 directed its efforts to the introduction of written engagements between landlord and tenant, and the Regulations of that time contain more than one homily upon the advantages that would surely accrue to both parties from the use of such written engagements; but neither party was in the least persuaded or converted: and finally a law was rescinded in which neither party saw sufficient benefit to himself to induce him to enforce it against the other. The little use

made of the provisions of the existing law, which enable the ryot to sue for a pottah or the landlord for a kabuliyat, goes far to show that the race of landlords and tenants in Bengal has not much altered its mind on this point since the time of the Permanent Settlement. The experience of the Registration Offices indicates that writing is commonly used in the creation of *new* tenancies, and we think it more advisable to leave the adoption of writing to its natural growth, which will no doubt be encouraged by the spread of education amongst the cultivating classes, than to force upon the people a law fashioned according to Western rather than Eastern ideas." We admit that the interchange of written engagements between landlord and tenant is not general in this country, but it cannot be denied that it is coming into vogue and is on the increase. It is not quite correct to say, as the Rent Commission say, that the practice is observable only in the case of new tenancies. In Eastern Bengal it is now much more general than it was ten years ago, whether it be an old or new tenancy. A new purchaser every-where generally makes it a point to exchange written engagements. When a new settlement of rent is made, both landlord and tenant for the sake of mutual security agree to an exchange of leases. If the facility for the registration of agricultural leases had been adequate, we believe their interchange would have been more frequent. Far from encouraging it the Rent Commission would, however, throw every obstacle in its way. They have omitted from the draft Bill the provisions of the existing law relating to ryots being entitled to pottahs, and landlords being entitled to kabuliyats, and the procedure for enforcing the rights so declared. They say: "We have just observed that very little use has been made of these provisions by those for whose benefit they were intended. This observation was more particularly concerned with their use as a means of reducing to writing the conditions regulating the relation of landlord and tenant. There is, however, another purpose for which they might have been used, that is, as a means to obtain an authoritative settlement of some essential question connected with the tenancy and in dispute between the parties there—the rate of rent, for example or the quantity of land held by the tenant. The landlord may contend that the ryot holds twenty bighas of land, while the ryot declares that he has but fifteen. Year after year the contention is renewed. The landlord threatens a measurement, which the ryot, afraid of a venal *Amin* and a varying pole, desires to avoid. A bribe to the *gomashtah* or compliance with some petty cess defers the final settlement of the question for a year; and the following year it arises again perhaps deterring the ryot from going to his landlord's *kachari* to pay his rent, lest he should be subjected to a demand the justice of which he will not admit. Or some fields in the ryot's holding are by him maintained to be second class rice land and assessable with the prevailing or usual rate for land of this class, whilst the landlord avers that they are first class rice land and should pay a higher rent. At every rent day the point is discussed; and in a country where any discussion is prone to beget a wrangle, seldom conducted with a seemly choice of expressions, an amount of irritation is kept up, which is not in harmony with the friendly relations

which should exist between a landlord and his tenantry. It is very desirable that facility be afforded for the ready settlement of questions like these which are constantly arising in this country, more especially in consequence of the absence of boundaries and fences and the want of an exact survey upon an uniform standard. It might have been thought that the landlord in the first case could easily have the question settled by tendering a pottah and demanding a kabuliyat for twenty bighas; and the landlord in the second case by tendering a pottah and demanding a kabuliyat for the field, as first class rice land: but if the land turned out to be nineteen and a half bighas instead of twenty, or one of the fields was found to be of some middle class kind of land, the suit, according to the decision of the highest tribunal in India, must fail and the parties be sent away, the real question in dispute unsettled, and their feelings roused and embittered by litigation. Thus these provisions of the existing law have become ineffectual for the only purpose for which the people cared to use them and for which they might have been beneficially used. While omitting what has been found useless in practice, we have endeavoured to supply the want thus indicated by experience. Section 151 of the Draft Bill accordingly allows either landlord or tenant to use it for the determination of any such questions which may arise between them. A copy of the decree passed in the case will have all the effect of a pottah or kabuliyat upon the point which the parties themselves wish to have determined." But the difficulties, which are now experienced, might have been remedied in the same way as that proposed by the Commission without annulling the system of pottahs and kabuliyats. The exchange of written engagements would be a boon to both the zemindar and ryot, and it is to be deeply regretted that it should be practically put a stop to just as the system was developing itself. The real object of the Commission seems to be to abolish contract in the regulation of agricultural relations in this country. The ryot is to be considered a free agent in all matters of life but in that which affects him most, we mean his occupation. He must be kept perpetually in the leading strings of custom. He is to be outlawed in land contracts. This is really monstrous, and we are surprised that the Bengal Government favours this idea. We cannot believe that the Government of India or the Secretary of State will deliberately ignore the law of contracts in the regulation of the relations between the zemindar and the ryot.

XXXIII.

THE greatest flourish made about the new Rent Bill is that its primary object is to benefit the actual cultivators of the soil. This is a benevolent object, and all right-minded men cannot but sympathize with it. And we do not think that that object is incompatible with a just regard to the interests of the zemindar. But how does the Government propose to attain that object? Let us see how the Rent Commission propose to bring it about. The three F's. constitute

the programme of land law reform in Ireland, fixity of tenure, freedom of sale, and fair rent. These three points also constitute the manifesto of the Rent-Law Commission of Bengal. They propose to give to the ryot fixity of tenure by recognizing his occupancy right, freedom of sale of his tenure by recognizing its transferability by private sale, gift or will, and to secure him fair rent under the rules prescribed. But what is a "ryot" according to the definition of the term by the Rent Commission? They say a "ryot" means "a person who holds land, or occupies and cultivates land, if such person was originally let into possession of such land for the purpose of cultivating it or bringing it into cultivation"—adding that "a person cultivates land or brings land under cultivation within the meaning of this definition, when the cultivation is carried on by himself, or by the members of his family, or by servants, or by hired labourers, or by persons to whom he has sublet the land or any part of it or partly by some and partly by others of these persons." The definition it will be seen is very broad. It includes a person who may carry on cultivation "by persons to whom he has sublet the land, or any part of it, or partly by some and partly by others of these persons." In other words the Commission recognize sub-letting. And as the privileges attached to the right of occupancy will be enjoyed by the ryot, who will hold the land, but may not cultivate it himself, the actual cultivators of the soil will not benefit in the least by the provisions of the Bill. These will give the sweat of their brow to make the land yield her hidden wealth, but they will, as the Bill stands and as it has been revised by Mr Reynolds, simply work as day-labourers. Menu says that the land belongs to him who tills it. In the progress of social economy the original tiller has become the capitalist as well as the owner of the land. Under the Mahomedan system the produce of the land was divided between three parties—the State, the zemindar, and the ryot. This system has been handed down to the British Government, and the tripartite interests have been to this day recognized. But as the resources of the land have developed the relations arising from it have multiplied. A large body of persons have intervened with intermediate interests in the land. This is the sub-infeudation system, which the zemindars have introduced for their own ease and safety, and which the Government has recognized for the security of its revenue, but which has as might be easily imagined borne hard upon the actual cultivators of the soil. This system has its merits and demerits, and considering the question in the abstract we must say that the latter preponderate. Be that as it may it cannot be denied that under this system the actual cultivator is the real sufferer. There may be half a dozen rent-receivers intervening between him and the zemindar, and all the profits derived by these intervenors come from the sweat of his brow. We can understand the position of those intervenors, who have acquired the right of property by paying for it, though we must confess that sub-infeudation even where the right is purchased at a fair price is injurious to the well-being of the *bona fide* cultivators, but what claim has the mere squatter for twelve years or three years, as the Rent Commission suggest, to a sub-proprietary right? He has not paid for his right, he has not invested any capital, he

simply comes in as a tenant, he may squat for twelve years, or for three years under the provisions proposed by the Rent Commission, and he will lord over the soil as a sub-proprietor. He will be competent to settle the land in any way he may think fit; he may transfer it by gift, sale, or will; he will not be liable to enhancement of rent at the discretion of the landlord; he will not be liable to eviction; he will be allowed to enjoy all these privileges, and yet he may not have the slightest interest in agriculture. He sublets the land, and the expenses and risks of cultivation will be his sub-tenant's, who will, however, have none of the privileges of occupancy tenant. In what way then will the actual cultivators of the soil, in whose behalf the proposed revolution in the land laws of Bengal is ostensibly put forth, be benefited? The whole thing we submit is a ruse. The Government says one thing and does another. It will spoliate the landlord not for the benefit of the actual tiller of the soil, but for that of a land speculator, who has no moral claim whatever to its generosity. And yet it pretends that it is going to benefit the peasantry of Bengal! Does the peasantry consist of those middlemen, who have not an iota of proprietary interest in the soil, but who have by a freak of the legislature acquired a sub-proprietary right by merely squatting on the land for twelve years or less, but who have no interest direct or indirect in the business of agriculture, or of those who from early morn to dewy eve till the soil, who are baked in the sun and drenched in the rains in the hard task of extracting the wealth from the land, and who go on toiling in this way from year's end to year's end? If the Government means the latter to be the peasantry of the country, then it has done nothing, absolutely nothing for them in this Bill. And yet it says that its primary object in reforming the land law of Bengal is to benefit the peasantry—the actual cultivators of the soil! Could any thing be more misleading, more inconsistent with the truth than this?

We admit that the question of subletting is very difficult and complicated, but if the Government has not the courage to face it, it ought not to have touched the Rent question. What is the object of legislating, if the outcome of legislation be only to strengthen the position of the mere squatter on the land, who has no interest in the business of agriculture? Let him cultivate the land, let him bear the expenses and risks of cultivation, let him prove that it is his labour, which produces the wealth of the country, and let him then enjoy the privileges, which it is proposed to confer upon the occupancy ryot. It may be said that if the squatter has become the middle-man, it cannot be fair and equitable to divest him of what is already vested in him. We admit this, but surely their is nothing to prevent the Legislature from enacting that henceforward no ryot shall be permitted to enjoy the right of occupancy, who has no interest in the business of agriculture. The definition of the word ryot is wide enough to include women, children, infirm and old men, and others, who may not cultivate with their own hands. Thus the Bill says that a person may be considered to cultivate the land or bring it under cultivation when the cultivation is carried on by himself, or by the members of his family, or by hired labourers. Surely this provision will cover all

classes of cases. Why should then the ryot be permitted to sublet and thus cut off his connection with the cultivation of the soil? If he does so, then he ceases to be an agriculturist. The Rent Commission say, "we have seriously considered whether the acquisition of a right of occupancy should not be limited in all cases to the actual cultivator of the soil. Having examined the subject in all its bearings, we have come to the conclusion that such a rule, if laid down, would exercise a disturbing influence, the immediate benefit to be derived from which appears doubtful to some of us, and the ultimate consequences of which none of us can pretend to forecast with any reasonable certainty. If all *korfas* or under-ryots were converted into ryots having or able to acquire a right of occupancy, some of us think that the rate of rent of occupancy ryots should be forced up to such a point, that a right of occupancy would be valueless, as it would become necessary to convert the superior ryot into a tenure-holder or undertenure-holder, and to take the present *korfa* rates of rent as the measure of the rates to be hereafter payable by the occupancy ryot. We have therefore decided to make no material change in this respect in the present law, which gives the right of occupancy to a ryot who "cultivates" or "holds," merely substituting for "cultivates" the more precise expression "occupies and cultivates." The term "holds" will of course include, as now, a ryot who has sublet in *bhagjote* or otherwise. We may observe that the law, as thus expressed, is in harmony with what we have stated to be our conception of the term 'ryot'." We cannot subscribe to this view of the Commission. We do not see the danger apprehended by them. It is not clear to us why the rent of the *korfa* ryot, when he acquires an occupancy right, will be forced up to the highest point. He is now rack-rented by the occupancy middle-man, but as an occupancy ryot his rent will be regulated by the provisions of the law. We do not wish to interfere with the arrangements already made between the occupancy middle-man and his *korfa* ryot, but we would not permit him to make such arrangements in future. If he does not like to have a direct interest in agriculture by the various ways we have mentioned above, he can have no just claim to the occupancy right. From the zemindar's point of view objection may be taken to this proposal, but that objection we believe may be met without trenching upon his rights or interests. What we wish to point out is that while the Government professes to benefit the actual cultivators of the soil by the new measure, practically it does nothing of the kind.

XXXIV.

In our last we endeavoured to shew that the new Rent Bill will not benefit the actual cultivators of the soil, though the revolutionary measure has been brought in in their name. The Government proposes to secure the position of the peasantry, but practically it secures the position of the occupancy middleman, and reduces the actual

cultivators of the soil to mere day-labourers. We observe that this point was very ably elucidated by Mr. H. L. Harrison, a member of the Rent Commission. He says, "I regard the right (to sublet) with very little tenderness I look upon it as an abuse of the occupancy right from the outset, though legal, because not prohibited." He then goes on: "I regard the prohibition of this as the key-stone to all future statutory legislation on the subject of rent. My late colleagues will, I am sure, bear me out in saying that from the very outset I always maintained that the question of sub-letting was the cardinal point, the hinge on which the other provisions of the Bill turned. I always pressed for its early discussion, and I am perfectly consistent therefore in now earnestly protesting against its adoption. It seems to me that both logically and historically the occupancy right is necessarily derived from cultivation, and any one who ceases to be a cultivator ceases to have any claim in reason to exercise that right any longer. He may of course fall back upon any previous or superior right which he has acquired by custom or special contract. As regards the *raison d' etre* of the right of occupancy, I entirely endorse what Mr. Field inserted as an explanation to his draft section 21, viz. that the object of "a right of occupancy in the actual cultivators of the soil is to encourage agriculture, the successful pursuit of which is of the first importance to the inhabitants of the provinces to which this Act extends. Such encouragement will it is apprehended, be afforded by securing the cultivator from arbitrary eviction (and I would add by holding the land at such a rate of rent as will leave him some profit after providing for the wages of labourers and every other expense of cultivation, i. e., at something below the market rate of the day; but it would be contrary to the policy and intention of the legislature to allow a productive cultivator to convert himself into an unproductive middle-man, and therefore sub-letting in future (by the occupancy ryot) is prohibited." I do not know how Mr. Field gets this from the preamble of Regulation II of 1793, which does not seem to refer to the right of occupancy; but the entire spirit of the Regulations of that period bears out this principle."

Mr. Harrison then quotes Mr. Harrington the great author of the analysis of the Regulations. He says: "In his minute, when leaving India in 1827, he (Mr. Harrington) writes that he has the best authority, that of his colleague Mr. Bayley, for saying in 1810, that the ryot in Burdwan "certainly now can scarcely support himself, almost every peasant is shackled with debt and harassed with the payment of rent which appears excessive with reference to his net profits;" and, Mr. Bayley adds, "that is chiefly ascribable to the introduction of the putnee system under which there are three, four, or even five and sometimes more links in the chain of intermediate tenantry between the landlord and the cultivators, and each of these middlemen looks of course for some profit, which ultimately falls upon the ryots." My own experience so far as it is worth any thing certainly goes to show that the utmost rack-renting is to be found when the ryot's tenure falls into the hands of mahajuns or other persons who do not cultivate themselves, but sub-let to korfa ryots. This is the system to which

Mr. Mackenzie and Mr. O'Kinealy would finally and definitely attach the seal of legislative sanction, for the percentage rule will infallibly break down as will any barrier to sub-letting which does not eventually, if persevered in, result in the forfeiture of the occupancy right." He adds: "It comes therefore to this—the permanent settlement recognizes the occupancy right in the resident cultivator. Act X recognizes it in some one else who may be the actual cultivator or may not. While it refuses it to the actual cultivator, if his lessor happens to be an old ryot and not a zemindar. We are now placed in this dilemma, either we must perpetuate this injustice which slipped in as it were by a side wind, and draw this invidious distinction between a cultivator who rents land from a ryot having a right of occupancy and from a zemindar direct, or we must create a second occupancy right in the same land, also an unheard of innovation, or we must go back to the principles of the permanent settlement and prevent any future sub-letting of the occupancy right; while at the same time we convert into middle-men as they already are in effect all who have regularly committed themselves to sub-letting."

Mr. Harrison makes the following suggestions for the purpose of limiting the occupancy right to the actual cultivators of the soil:

I do not believe, however, that we can satisfactorily discourage it, except *by interesting the landlord in its suppression.* I distrust Mr. Mackenzie's self adjusting proposal because it does not give the zemindar any stopping interest in subletting; and unless we utilize his agency we can hardly expect to succeed. I would therefore, not hesitate to prescribe that if the occupant ryot sublets, or, if you like, say sublets for a longer period than two years, the zemindar may serve a notice upon him requiring him to resume cultivation. If he fails to do so during the agricultural year succeeding the service of the notice, I would authorise the zemindar to eject him, and at his option to take over the sub-lessee as his tenant or lease the land to another tenant. In either case the right of occupancy would lapse. If however the zemindar fails to take action for twelve years, and the land remains sublet to the same sub-lessee, this man would acquire the right of occupancy, and could claim to be admitted as his tenant by the zemindar. The zemindar would similarly call upon the sub-lessee to attorn to him; in either case the rent of the new tenant would be the sum which he was paying or the sum the former tenant was paying, whichever might be the highest. In this way there would be some prospect after a time of effectually discouraging sub-letting.

If the occupancy ryot on the other hand sublets a portion only of his holding the zemindar should have the same right of calling upon him to resume cutivation of the whole; and on his failing to comply the occupancy right would lapse. If, however, no action was taken for twelve years, it would be fair to oust the occupancy ryot only from the portion sublet, leaving him his right intact in the remainder. The zemindar could not complain of the division of the holding which would thus result as he could have put a stop to it at an earlier period had he chosen. This, however, is a matter of detail.

We do not wish to discuss the suggestions of Mr. Harrison. We simply wish to show how strongly he feels on the subject, how ill-calculated is the new Rent Bill, in his opinion, to fulfil the object for which it has been framed, viz., the good of the actual cultivators. Although the flourish made about the benevolent object of the Bill is

thus mere moon-shine, the zemindars and tenure-holders will be spoliated, but the actual tillers of the soil will not benefit; the whole profit will go to an indolent or grasping occupancy middleman, who has neither a legal nor a moral claim to it.

XXXV.

LAST WEEK we quoted Mr. H. L. Harrison in support of our statement that the new Rent Bill, by creating the occupancy tenant a middleman, will not in the least benefit the actual cultivators of the soil. In going through his note dated the 6th March 1880, we find that he is the only Member of the Rent Commission, who takes a correct view of the theory of rent in this country. We do not quite go with him as to the character he assigns to the land-revenue payable to Government, but he correctly describes the basis on which the rent payable by the ryot was calculated. He writes:

The view I would adopt as the correct one, in opposition to this interpretation of the Regulations, is set forth in the following propositions :—

(*a*) The State as such had and has a *sovereign* right of *taxing* all classes of its subjects, including landholders and cultivators. It is necessary to refer to this, as it explains some obscurity and occasional confusion of ideas in the languages of the period of the permanent settlement. This right it certainly did not make over to the Zemindars.

(*b*) It has also a *customary* right sometimes confused with the above, but radically distinct from it, as supreme proprietor, of taking the full market rent of the land for its own use. This proceeding is not taxation proper more than the Crown enjoying the full rental of the Crown lands in England or the Queen of the lands belonging to her in the Isle of Wight is taxation. This is fundamentally the proprietary right, and was exercised in India by the State because, and only because, the State was the proprietor.

(*c*) By a natural process this proprietary right to the full market rent of the land was in time commuted to its proximate equivalent, the right *to a specific share in the gross produce of the land*, and the East India Company inherited the right in this stage from the Mogul Government.

(*d*) It was precisely this right neither more or less, that it was intended to relinquish for a fixed contract sum to the zemindars by the permanent settlement

(*e*) *Per contra* what it was intended to secure to the ryots was the enjoyment of *their* share of the produce, but not any part of the State's share, the whole of which was transferred to the zemindars.

(*f*) there is nothing in the specific provisions of the Regulations to justify a claim to anything more than this share of the produce on behalf of any ryots, except such as held extensive tenures from the time of the settlement

He then goes on: "I feel little doubt that the right of Government to the full normal rent of the land was the original foundation of the right to a specific share of the produce, but if any one questions this opinion it is of no consequence, and I waive any argument derived from it, the next proposition suffices. Whether as a fundamental or as a derived right it matters little, but no one will, I think, question that at

the time when the East India Company succeeded to the Mogul Government, it was regarded as a normal right of the State that it was entitled to a *definite share of the gross produce of the land.* Thus in the 5th Report, para 16 quoted by Mr. O'Kinealy, we read—"This rule is traceable as *a general principle,* through *every part of the Empire which has yet come under the British dominion,* and undoubtedly had its origin in times anterior to the entering of the *Mahomedans* into India. By this rule the produce of the land, whether taken in kind *or estimated in money* (observe those words), was understood to be shared in *distinct* proportions between the cultivators and Government. The shares varied when the lands were recently cleared and required extraordinary labour, but when it was fully settled and productive, the cultivator had *about two-fifths* and the Government the remainder. The Government share was again divided with the zemindars and the village officers in such proportion that the zemindars retained no more than one-tenth of this share." Or, again, as Lord Hastings says in his Revenue Minute of 21st September 1815: "The cultivating zemindar (*i. e.,* ryots) were by a custom more ancient than all law entitled *to a certain share of the produce of their lands,* and that the rest, whether collected by pergunnah zemindars or by the officers of Government, was collecled as the *huk* of the *Sircar.*"

Mr. Harrison then proceeds to shew that the fundamental idea of the Permanent Settlement was to transfer to the zemindar the Government share of the gross produce, whether paid in kind or *estimated in money.* He thus remarks: "This makes it clear that produce and not money rental was the ultimate standard to be appealed to in any question of rent between the zemindar and ryot, and also explains the well-known rule (inexplicable on any other grounds) that if the character of the produce was changed, the rent must also be changed. We find indeed that in some cases, if the rental payable by the ryots could not be in any other way determined, it was a custom to settle the amount by an actual reference to produce." "The cultivators of the soil had the right, or perhaps it was the usage, when excessive *money* rents were demanded of them, to offer to the person entitled to the *rent* of their lands the alternative of receiving his dues *in kind, according to the pergunnah rate of division.*" (Report of Mr. Fane, Collector of Tirhoot, in 1821.) Lord William Bentinck put forward the same view. His Lordship wrote: "In fixing the revenue in perpetuity, the Government compromised no rights but its own *to the increased rent which would have accrued naturally from increased produce, enhanced prices,* and the reclaiming of waste lands; and that no act of Government could be construed as legalizing a demand on the part of the zemindars of more than *the proper land rent, that is the Government share of the gross produce;* but at the same time *all that the cultivating classes had a right to demand* was that the proportion which the Government share should bear to the gross produce of the soil should be regulated on some fixed principle which might always and easily be appealed to. The rent realized by the zemindar would fluctuate, more or less, under such a principle; but by this fluctuation he would gain as often as he would lose, and the rent taken from the cultivating tenant

would not trench, as it might be feared was sometimes the case as at present, on the very means of subsistence and just wages of labour." After quoting Mr. Harrington, Mr. Harrison remarks: "It is quite evident that, as regards holdings, which date from a period after the permanent settlement, Mr. Harrington would allow the landlord the fullest discretion, so far as not absolutely prohibited by law. Obviously under this principle, a zemindar might recover any rent he could obtain not exceeding the money equivalent of the *State share of the produce,* which I contend is the only equitable limitation that can be derived from the permanent settlement to the demands of the zemindar from all ryots who do not hold *istemraree* tenures. Similarly, in the same minute, commenting on a proposal of Mr. Holt Mackenzie's which I have already quoted, to settle the rents of ryots in permanently settled estates by the agency of the Collectors, Mr. Harrington writes:—"Now however proper it may be to vest the revenue officers with the powers above specified in all instances where the permanent settlement has not been made with the landholders, and however much we may regret that it was not done in the Lower Provinces (as virtually proposed by Mr. Shore) *before the rights and interests of the State in the rents payable by ryots* and other occupants of the soil were made over by composition and contract in perpetuity to the persons who engaged for the land revenue receivable by Government, I cannot *but entertain some doubt, whether we should now be warranted in taking out of the hands of the landholders, and placing in those of the Collectors, or other officers of Government, the entire adjustment of the rents of their estates.*" The italics are not ours. They shew that according to Mr. Harrison the authority for the adjustment of rents rested with the zemindars themselves. Mr. Harrington held that the Government would not be justified in placing the determination of rent in the hands of the Collector. But the Rent Commmission would practically leave it to the Collector by authorizing him to prepare a table of rates, subject to the approval of the Board of Revenue. Mr. Harrison offers the following interpretation of Act X of 1859:

Act X recognizes no class entitled to hold at privileged rates except those who held *istemraree* tenures from the time of the permanent settlement, or who could give what was considered sufficient presumptive proof of this. Ordinary ryots having rights of occupancy were to pay a fair and equitable rent. Now, we know that these words were chosen with much care and in preference to any reference to "pergunnah" or "customary" rates of rent. But what meaning can fair and equitable as applied to rent have except such a rent as secures to the rent-payer the full cultivation profits of the land and to the rent-receiver the natural rent of it. Mr. Mackenzie objects to any comparison of the rent of occupancy ryots with those of tenants-at-will, who of course have to pay the rent determined by the market value of the land. It does not matter much whether we call it the natural rent, the market rate of rent, the competition rent, or by any other name. That rent which the land can afford to pay is the rational standard of a fair and equitable rent, and if we endeavour to adopt any other, or desire to make any other standard than that of supply and demand the test of what is fair and equitable, we commit a grievous mistake. Moreover, we have the very best evidence that this was the intention of the framers of the Act, in the letter of Sir Henry Rickets which forms part of the corres-

pondence which had been laid before us. In this letter Sir Henry Ricketts thus writes:—"Assuredly when we were engaged in framing Act X of 1859, and said in section 6 any ryot who has cultivated or held land for 12 years has a right of occupancy in the land so held and cultivated by him, and in section 5, ryots having right of occupancy are entitled to receive pottahs, at fair and equitable rents, we never dreamed of giving them an advantage of one-third over their tenants-at-will neighbours * * As far as I can recollect in all the discussions we had in framing Act X of 1859 in all the suggestions we received from all parts of the country, there was never any mention of any considerable advantage to occupancy ryots beyond protection against summary dispossession. Having held possession for 12 years, a ryot was to have the right of remaining in possession, at a fair and equitable rent. Assuredly in 1859, the market rate of the day regulated by cost of labour, value of produce, increasing or decreasing demands for land, was the rate held to be fair and equitable." It would be impossible to find a more emphatic condemnation by anticipation of the line of argument which Mr. Mackenzie and Mr. O'Kinealy have adopted than is contained in the above passage.

I consider, therefore, there is nothing whatever to warrant the argument by which Mr. Mackenzie justifies his proposal to fix a low rental for occupancy ryots of the present day. "Now that the ryot's right has by lapse of time and advancing prices become generally a thing of real value. I can support no proposal which tends to confiscate this, or to limit it in an arbitrary unconstitutional way." If Mr. Mackenzie means that the share of the gross produce which it was intended to secure to the ryots at the permanent settlement has now become a thing of real value, he is, I am certain, totally mistaken, and no ryot of the present day will thank him for securing him two-fifths or whatever other proportion of the gross produce it was customary for him to receive in 1793. If he means any thing else, the confiscation is on the other side. The permanent settlement intended to confer on the zemindar the full Government share of the gross produce; give him that share now, or its equivalent in money and he will be abundantly satisfied. Act X of 1859 was designed to give him the full market rent of land as determined by supply and demand and it is the failure of the courts to give practical effect to that intention, and not enhanced prices, which has converted the occupancy right into a thing of real value.

The arguments of Mr. Harrison conclusively show that in times past the produce of the land was divided in certain proportions between the zemindar and the ryot—call the zemindar's share the State's share or by any other name you like. We propose to restore the *status quo ante*. Let the zemindars' share of the gross produce be fixed, and let the ryot enjoy the rest. The determination of rent on such a principle would be fair and equitable to both.

XXXVI.

THE chapter of the Report of the Famine Commission on landed tenures well fits into the report of the Rent Commission. It may, therefore, be interesting to consider the suggestions of the former in connection with those of the latter. The Famine Commission review the question of tenant-right in the Bengal Presidency. They hold that in times past the resident ryot had always a right of occupancy,

but that this right was obscured as British law advanced in India. This tendency, they remark, was stopped by Act X of 1859. This law still continues to be in force in Bengal and the Central Provinces with certain amendments, and in both its further revision is now under consideration. It has been superseded by later enactments in Oudh and the North-Western Provinces. In the Punjab, at the time of the first settlement of the land, all tenants of any standing were declared to be entitled to occupancy right. This declaration was afterwards contested when a more elaborate record of titles was in progress; and large numbers of tenants who had thus been recorded as possessed of this right were held not to be entitled to it. Ultimately, after prolonged discussion, it was provided by Act XXVIII. of 1868 that all tenants whose past history or circumstances at that time indicated a privileged position, or who had been recorded in any preceding settlement as entitled to occupancy right, should be so treated in future, but no provision was made for the future accrual of such right by reason of the efflux of time during the occupation of land as a tenant-at-will. When once an occupancy tenant's rent has been enhanced by the decree of a Rent Court, a second suit cannot be brought for five years unless the land revenue has been raised meanwhile in the course of a settlement. The number of tenants of this class is 540,000, and they cultivate an average area of 6½ acres. The tenants-at-will are about 1,100,000 in number, with an average area of 5·9 acres apiece. In the North-Western Provinces in the earliest regular settlements (made under the provisions of Regulation VII. of 1822 and Act IX. of 1833) rent-rolls were drawn up in which all tenants residing and cultivating land in the village were recorded as in permanent occupation of their holdings, and their rents were fixed by the settlement officer on the understanding that they were not to be enhanced during the term of settlement. By the passing of Act X. of 1859 provision was made for the first time for the separation of the two classes of tenants according as they had or had not cultivated their lands continuously for the space of 12 years, and for the enhancement of the rents of occupancy tenants on certain specified grounds by decree of the Rent Court, a further stipulation being made that in the pemanently settled districts those who were proved or presumed to have been in occupation at the time of the Permanent Settlement should not be liable to any enhancement of rent. In 1873 an amended Rent Act was passed, which prescribed stricter rules for the decision of enhancement suits, and created a new class of "privileged" tenants, viz., those who had been proprietary cultivators, but had lost their proprietary rights by sale or otherwise, though still remaining on the land as cultivators. The number of tenants at fixed rates in the permanently settled districts has not yet been recorded. The occupancy-tenants in the North-West-Provinces, hold 41 per cent. and the tenants-at-will 31 per cent. of the cultivated land, the balance being tilled by the proprietors themselves. It is estimated that the former class number about 1,500,000 and the latter about 1,200,000, the average area cultivated by each tenant being 4·8 and 4 acres respectively. In Oudh occupancy rights were altogether unknown at the time of annexation, and the bulk of the cultivators

hold as tenants-at-will. The occupancy right has, however, been conceded as a compromise to those who were formerly proprietors, and had not been altogether deprived of their rights by the talookdars. There are in Oudh nearly two million tenants, holding 3·1 acres apiece on an average. In Bengal Act X of 1859 has made quite a revolution in the relation between the landlord and tenant. The total number of tenants in Bengal is said to be 10 millions. The following is a classification of them according to the amount of rent paid by them:

	Rs.	Bengal. Rs.		Number of Tenants
Tenants paying over		100	...	25,241
Ditto	50 to	100	...	119,617
Ditto	20 to	50	...	682,353
Ditto	5 to	20	...	2,789,409
Ditto under		5	...	6,136,264
Total.				9,752,884

In the Central Provinces the unprivileged tenants-at-will are in the same position as in Bengal and the North-Western Provinces. The privileged or occupancy tenants are divided into two classes; absolute occupancy-tenants, whose rents are fixed by the settlement officer for the term of the settlement, and who can mortgage their holdings, and, subject to the landlord's right of pre-emption, transfer them; and conditional occupancy tenants, who are not entitled in the absence of special local custom, to mortgage or sell, and whose rights in other respects are those laid down by Act X. of 1859. There is also a class of old and well-established tenants who possess a right almost equivalent to proprietary right but confined to the plot of land they cultivate; their numbers are about 15,000. Regarding the other classes of occupants the following information is on record:

		No.	Average Holding in Acres.
Absolute occupants	...	159,715	19½
Conditional occupants	...	121,807	15½
Tenants-at-will	...	469,031	14

It will be seen from the above analysis that in Bengal the greatest encroachment has been made on landlord rights. We believe 90 per cent of the ryots in this province have acquired occupancy right and taken the position of what is called the privileged class. But the aggressiveness of the legislature has it would seem sown seeds of disturbance between the landlord and tenant throughout the country. The Famine Commission remark: "From all quarters it is reported that the relations between the landlord and the tenants with occupancy rights are not in a satisfactory state, and are becoming yearly more and more hostile; so much so that a landlord will generally refuse any aid to his occupancy tenants when they are in difficulties and will do all that he can to ruin them and drive them off the land. The reason of this hostility is that an opposition of interests has been created between the two classes; the occupancy-tenant possesses a beneficial interest in the land, and intercepts a portion of the profits which the

landlord would obtain if he were able to exact from him the full rent which he can obtain from a tenant-at-will." This antagonism between class and class bodes no good, and we regret it very much. Strange to say, the Famine Commissioners have got a notion that the peasantry of Bengal are in a most backward and destitute condition, so much so as to be on the verge of starvation. They remark, "we feel no doubt that the condition of the rent law and the way in which it is administered in Bengal are, as it was described to us by a high official of the province, a very grave hindrance to its agricultural prosperity, and that large portions of the agricultural population remain, mainly owing to this cause, in a state of poverty at all times dangerously near to actual destitution, and unable to resist the additional strain of famine." The best answer to this sweeping statement is contained in the following extract from Sir Ashley Eden's speech in 1877 on the condition of the agricultural population of Eastern Bengal. His Honor said: "I have just returned from visiting the eastern district, and I may say on this occasion, when my administration is only at the commencement, what I could not well say at a later period without seeming to seek credit for the Government of which I am the head. Great as was the progress which I knew had been in the position of the cultivating classes, I was quite unprepared to find them occupying a position so different from that which I remembered them to occupy when I first came to this country. They were then poor and oppressed, with little incentive to increase the productive powers of the soil. I find them now as prosperous, as independent, and as comfortable as the peasantry I believe of any country in the world; well fed, well clothed, free to enjoy the full benefit of their own labours, and to hold their own and obtain prompt redress for any wrong." Comments on the above are superfluous.

In the Bombay Presidency the bulk of the landholders are peasant farmers, technically called "occupants," paying land revenue direct to Government, and enjoying, subject to such payment, a veritable and transferable property in their holdings. This conditional proprietary tenure has, however, a tendency to favour the growth under it of a class of sub-tenants, and such a class is now known to exist. There are also tenants under the holders of land technically called "alienated," that is, land from which the State-right to receive rent or revenue has been wholly or partially transferred to private persons. Lastly, there are in Guzerat and the Konkan two small classes of landlords whose land is cultivated by tenants. To give some protection to all such inferior holders, provisions regarding tenant's rights were introduced into the Bombay Revenue Code of 1879. The effect of these is, that in the absence of any agreement or custom to the contrary, old tenants, or those as to the commencement or intended duration of whose tenancy there is, by reason of antiquity, no satisfactory evidence, are secured in possession of their holdings as long as they pay the rent fixed by agreement or claimable by usage, or if there be no evidence of usage or agreement, the rent found just and reasonable by a Civil Court. But there is no provision for the accrual of occupancy right in virtue of possession as tenant for twelve years or any prescribed period. The other classes of tenants recognized by the law are tenants under agree-

ment and tenants by annual tenancy, and the rent payable by them is determinable in the same way as that of the old tenants, but they have not the same prescriptive right of occupancy. The landlord may enhance the rent as he may be entitled by agreement, usage, or otherwise, and may evict for non-payment. These provisions are applicable generally to all persons holding land from a superior holder or landlord. In Madras according to a decision of the local High Court passed in 1871 a zemindari tenant is a tenant-at-will, and in the absence of the proof of a custom to the contrary the landlord has absolute right to enhance or eject.

The law of tenant-right is thusnot the same throughout India. The boldest advance was made by Act X of 185). But the Rent Commission are not satisfied with it, and they recommend a further change.

XXXVII.

In our last we quoted the report of the Famine Commission to shew the position of the tenant-right in the different provinces of India. We endeavoured to shew that it was only in Bengal and the Central Provinces twelve years' undisturbed possession of land conferred upon the tenant the right of occupancy. The Famine Commission would make the twelve years' rule general. They remark: "One of the most prevalent forms of oppression on the part of the landlords is their habit of breaking up the holdings of their tenants, and compelling them to change the fields they cultivate, with a view to the destruction of occupancy rights, or rendering them indistinct when they exist, and preventing their accrual in the case of tenants-at-will. This practice prevails even in some parts of the North-Western Provinces, where the village papers are not so kept up as to preserve an accurate record of the changes in occupation from year to year; it is peculiarly common in Bengal where no such records exist. To obviate this, the remedy proposed by the local authorities is the creation of a presumption in favour of all resident tenants that they have continuously occupied the same lands, unless the contrary can be proved. It is, in our opinion, questionable whether the law ought not to go even further, and to declare that all tenants who have been resident and have cultivated land in the village for 12 years and upwards are entitled to occupancy right in their land, and to restrict the exceptions to this rule to cases in which the landlord can show that a tenancy on a different footing has been expressly created by act of the parties." It will be seen that this suggestion of the Famine Commission materially differs from that of the Bengal Rent Commission, and of Mr. Reynolds. The Rent Commission recommend 3 years' occupancy, while Mr. Reynold's Bill fixes no time whatever, but gives the right of occupancy to any squatter, who may hold and cultivate land within an area of two miles, though the land may belong to two or more different villages, to two or more different estates, and to two or more different landlords. The Famine Commission would restrict the right of occupancy to the tenant, who

resides and cultivates in the same village, but neither the Rent Commission nor Mr. Reynolds would stick to this limitation. The Famine Commission notwithstanding their extreme North West ideas as to tenant-right are thus far less revolutionary than the Rent Commission and Mr. Reynolds.

With regard to the legal incidents of the occupancy right the Famine Commission discuss two important questions, viz., the transferability of the occupancy tenure and sub-letting. With regard to the first the Famine Commission are more moderate than the Rent Commission and Mr. Reynolds. The two latter would recognize the general transferability of the occupancy tenure. The Famine Commission remark: "Two important questions closely connected with the matters of which we are now treating are whether the occupancy-tenant should have the power of transferring his rights by sale or mortgage, and whether he should have the right of sub-letting. The former of these two questions has been much discussed in the evidence taken by our Commission, and elsewhere, and very different conclusions have been arrived at, one party contending that the right is imperfect and incomplete unless it can be sold, the other fearing that if it becomes a marketable property the tenant will be tempted to borrow on the strength of it, and will so be led into debt, with the same evil results as have occurred in the case of the proprietors in some parts of the country. In the North-Western Provinces when the Rent Act was under revision, in 1873, the latter view prevailed, and these occupancy rights were then declared not transferable, and in the bill now under consideration for the Central Provinces it is proposed to make them transferable only to such persons as can inherit from the tenant. In Bengal, on the other hand, the majority of officers, headed by the Lieutenant-Governor, desire that the rights should be made transferable by sale, and see in this provision a measure which will tend greatly to strengthen the tenant's position. Though on the whole we regard the general concession of the power of sale of these rights to be expedient, and ultimately almost unavoidably, the immediate course to be followed by the Government must no doubt be to a great extent governed by local custom. Where the custom has grown up, and the tenants are in the habit of selling or mortgaging their rights in land, it should certainly be recognized by the law; and where it has not, it may be questioned whether the law should move in advance of the feelings and wishes of the people." On this important question the two Commissions widely differ. The Rent Commission would give the occupancy ryot a general right of transfer of his tenure, while the Famine Commission would not do so, but would recognize it where it is already recognized by local custom. As we have discussed the question *ad nauseam* we will not repeat what we have already said on the subject.

We next turn to the question of sub-letting. The Famine Commission remark: "But the question of sub-letting seems to us to be one of even greater importance. The more valuable the occupancy right becomes by reason of such measures of protection as we have advocated, the more need there will then be of guarding against a custom which is everywhere prevalent in India, under which the pri-

vileged tenant is apt to turn into a middleman, sub-letting the land and living on the difference between the rack-rent and the privileged rate secured to him by the law. The occupancy right can only be beneficial to the community when enjoyed by a *bona fide* cultivator; and the object of the law should be to prevent any one who is not a *bona fide* cultivator from acquiring or retaining such rights. If this can be secured, the chief danger in the way of making such rights marketable will be removed, for they will not be able to pass into the hands of money-lenders; and if a tenant who becomes deeply involved is sold up, his land will pass to another tenant presumably a more thrifty man, and the public interests will not suffer by such a substitution. We therefore recommend that concurrently with the extension of the right of transfer the practice of sub-letting by an occupancy-tenant should be discouraged, or even, if possible, forbidden. Care must no doubt be taken lest such a measure should work harshly. But if a tenant, for a long period, fails to keep up the stock required for cultivating his land, or otherwise ceases to be by occupation and habit a bona fide cultivator, the rights he or his ancestors acquired by cultivating the soil might reasonably pass from him to the person who, having become the actual cultivator, occupies his place. We conceive that it would not be difficult for the Rent Courts to investigate and decide the question of fact, whether a tenant with occupancy rights has or has not wilfully ceased to be a habitual cultivator in respect of the whole or any part of his holding; and when such lapse is established the occupancy right might be held to have passed to the person to whom the actual cultivation of the land has been transferred." On the other hand the Rent Commission remark: "We have seriously considered whether the acquisition of a right of occupancy should not be limited in all cases to the actual cultivator of the soil. Having examined the subject in all its bearings, we have come to the conclusion that such a rule, if laid down, would exercise a disturbing influence, the immediate benefit to be derived from which appears doubtful to some of us and the ultimate consequences of which none of us can pretend to forecast with any reasonable certainty. If all *korfas* or under-ryots were converted into ryots having or able to acquire a right of occupancy, some of us think that the rate of rent for occupancy ryots would be forced up to such a point, that a right of occupancy would be valueless, as it would become necessary to convert the superior ryots into a tenure-holder or undertenure-holder, and to take the present *korfa* rates of rent as the measure of the rates to be hereafter payable by the occupancy ryot. We have therefore decided to make no material change in this respect in the present law, which gives the right of occupancy to a ryot who "cultivates" or "holds," merely substituting for "cultivates" the more precise expression "occupies and cultivates." The term "holds" will of course include, as now, a ryot who has sub-let in *bhagjote* or otherwise. We may observe that the law, as thus expressed, is in harmony with what we have stated to be our conception of the term "ryots." We hold with the Famine Commission that if the occupancy right is to be conceded, it ought to be conceded to the actual cultivators of the soil. If the proposed changes in the law should result only in strengthening the

position of the middleman, it would be a calamity to the real peasantry of the country.

XXXVIII.

THE usefulness of representative bodies like the British Indian Association is markedly illustrated in the case of the Rent Bill. The intense interest which has been created in the Rent Bill among the landholding class has been not a little due to the exertions of the Association. The Government of Bengal, we must do it the justice to say, has from the beginning professed a laudable desire to consult public opinion before formally introducing the new Bill into the Legislative Council. It accordingly addressed the British Indian Association for an expression of opinion on the Bill. The first requisition of Government was received by the Association on the 9th July 1880, and the Committee of the Association lost no time in appealing to their constituents in the mofussil and others interested in land for an expression of their opinion on the subject. They addressed them as well as the Landholders' Associations in the interior a circular together with a synopsis, in both English and Bengali, of the changes contemplated by the draft Bill of the Rent Commission, inviting their co-operation and expression of opinion either through properly organized public meetings in their respective districts or by representations to Government. As many persons interested in the question were not conversant with English, the Committee suggested to Government the propriety of publishing the translations of the Report and the Bill of the Rent Commission in the vernaculars. The Government was pleased to comply with this request. A ready response was given to the appeal of the Association by the country. The Behar Landholders' Association took the lead and held a public meeting for the discussion of the subject. Their example was followed in other districts. The East Bengal Landholders' Association and the Rajshahye Association held meetings and criticized the Bill. Public meetings were also held in the districts of Hooghly, Nuddea, Backergunge, Mymensing, Chittagong, Dinagepore and Bhaugulpore. The Committee of the Association received from many landholders their individual opinions on the provisions of the Bill. The interest thus manifested was general and wide. In the meantime the Government of Bengal commissioned Mr. Reynolds to visit some of the most important districts and hold conferences there on the subject of the Bill. Accordingly Mr. Reynolds held conferences at Bankipore, Dacca, Hooghly and one or two other places. It was given out at these conferences that the Lieutenant-Governor was not pledged to the Bill of the Rent Commission and that His Honor would be prepared to modify the provisions of the Bill in the light of the criticisms and suggestions that might be submitted to him. Believing, however, that it would simplify their labours if the Committee could obtain a statement of the views of His Honor, so far as they might have then been formed, as to the points to which he might wish to restrict the proposed legislation,

they addressed a letter to Government dated the 9th December last, in reply to which Mr. Secretary Mackenzie indicated the course which the Lieutenant-Governor proposed to take with reference to the Rent Bill. Although it was stated that the Government "was not yet in a position to state precisely the modifications in the draft measure prepared by the Rent-Law Commission," still it was said generally that "the Lieutenant-Governor has no doubt that it will be possible to simplify very considerably both the substantive and the procedure portions of the draft Bill." Accordingly certain important points were indicated, regarding which the views of the Lieutenant-Governor were generally stated and the opinion of the Association was also invited. On the receipt of this communication the Committee thought that the best way of dealing with it would be to consider the proposals of His Honor at a general conference of landholders, and they accordingly invited a Conference of landholders at the rooms of the Association, asking them to be present either in person or by delegates. Their invitation was readily responded to throughout the Mofussil. Almost all the districts were represented at the Conference. The Government came forward to assist the Conference in their deliberations by supplying them with copies of the Bill as revised by Mr. Reynolds together with an elaborate memorandum prepared by him. In communicating Mr. Reynolds' Bill and memorandum the Government informed the Association that "it is understood that the Lieutenant-Governor's orders have been taken on all the points touched upon in the memorandum but that the conclusions thus provisionally arrived at are open to reconsideration hereafter." The discussions of the Conference were chiefly confined to the Bill and memorandum of Mr. Reynolds.

The idea of the Conference was thoroughly practical. A monster meeting as had been originally contemplated would have been doubtless very largely attended, and as a demonstration would have been effective. But what was wanted was calm deliberation and not grandiloquent speechification, and at a crowded public meeting there is little room for such deliberation. The Conference sat from time to time for three weeks and carefully discussed the provisions of the new Bill *seriatim*. The opinions of the Conference are set forth in a letter of the Association covering 29 pages of foolscap.

The Association at the outset remark: "It could hardly be expected that in matters of such vital importance as the amendment of the Rent-Law involves there should be perfect unanimity of opinion in all points. Customs, usages, and experience differ in different districts, and it is therefore not at all unnatural that under such varying circumstances particular points should be viewed variously by different landholders. It would be tedious and unprofitable to give in detail the various opinions on different questions expressed at the Conference. The Committee therefore prefer to submit to Government the conclusions arrived at by the majority on the different provisions of draft Bill No. 2. The Conference in considering the Bill, gave the fullest attention to the remark of Mr. Reynolds, that "the Bill now put forward should not be subjected to merely destructive criticisms." They have made suggestions on points, which they think admit of alterations or

improvement, but where in their humble opinion no changes are needed, or where the changes made are unjustifiable or injurious innovations, it has not been possible for them to make suggestions, they have been obliged to content themselves with a mere statement of their reasons against these innovations." In the first place the Association protest against the manner in which the proposal to amend the Rent-Law has been conceived and carried out. They remark :

The first question discussed by the Conference was the necessity of the Bill. They are unanimously of opinion that no occasion whatever has arisen for a radical alteration of the substantive law. Many as were the changes introduced by Act X. of 1859 and since reproduced in Act VIII. of 1866 B.C., not a few of which were opposed to both the letter and spirit of the Permanent Settlement Regulations, and to the judicial interpretations of the same, they have become a part and parcel of the law of the land, and numerous transactions have taken place in all parts of the country under the authority of that law. To alter the substantive law again in the way proposed would be not only to shake the basis of property thus acquired, but to unsettle still more the relations subsisting between landlord and tenant, to bring in discord where there is harmony, and to sow the seeds of ill-will and antagonism, where there are now good-will and peace. It has been a received maxim in legislation that no change in law should be made unless there was an absolute and well ascertained necessity for it ; such necessity should be expressed by the general sense of the people, by a deeply and widely felt want, by some administrative difficulty or by some exigencies in the social economy of the country. No such conditions, however, exist for a change in the substantive Rent Law of Bengal. Until the Government had led the way as it were by the appointment of the Rent Commission not a voice had been heard calling for a change in the law. No want or wish was expressed for such a change. Not a single instances occurred of the administrative machinery coming to a dead-lock in the absence of such a change nor has the progress of social economy received any check from want of such a change. If the Government had any doubt on these points, it might have instituted a proper and organized local enquiry by taking the evidence of competent persons on the subject. Instead of appointing a Commission to amend the Rent Law, it might have charged it to enquire into and report on the necessity for the desired amendment of the law. In the United Kingdom, as indeed in all other civilized countries, such enquiry generally precedes legislation, but unhappily as regards this momentous land question of Bengal, which affects millions of people, and interests hundreds of millions of sterling worth, execution has preceded enquiry, a foregone conclusion has taken the place of unbiassed investigation, assumption that of logical deduction.

We will take a future occasion to notice the observations of the Association on the different provisions of the Bill.

XXXIX.

WE think it is now time for us to close the present series of articles on the Report of the Rent-Law Commission. We commenced it on the 26th July 1880, and for nearly ten months we have gone on week after week discussing the proposals and recommendations of the Commission. We are afraid we have tired the patience of the reader. We had one

great object in view in commencing the series—we sought to rouse public opinion on this vitally important question, and we venture to think that that object has been attained. No measure of Government of late years has attracted so much public attention as this. It has been discussed throughout the country, and representations have poured in upon Government from all quarters. The discussion which has followed the proposed Rent Bill is in marked contrast to what took place when the Rent Bill of 1859 was passed. That Bill sounded the first tocsin of Revolution in the Rent-Law of Bengal, but it was lost amid the din and turmoil which then filled the country in consequence of the Mutiny. The only representation of any note, which was then submitted to Government, came from the British Indian Association. But even that vigilant body did not then shew sufficient activity in the matter. It contented itself with submitting a memorial to the Legislative Council. It did not then take any steps, as it has done on the present occasion, to organize public opinion on the subject. The times were out of joint, and political agitation was naturally at a stand-still. But the times have since changed. The Government has now become more alive to public opinion than ever. Sir Ashley Eden has invited expression of public opinion from all quarters. He asked district officers both executive and judicial to express their opinion on the Bill. He invited the public Associations to discuss the Bill. He appealed to the leading men in the districts to consider the Bill. He then offered every facility in the way of discussion. He caused the Bill and the Report of the Commission to be translated into Bengali, Urdu, and Hindi, and the translations to be extensively circulated. He went further and deputed Mr. Reynolds to tap the great centres of Mofussil opinion. Thus ample opportunity has been given to the public for a thorough discussion of the Bill.

These discussions have had the desired effect. They have shewn how arbitrary, one-sided, and revolutionary the Bill of the Rent Commission is. No one questions the great ability with which the Report of the Rent Commission has been written and the Bill has been prepared by them. But unfortunately the Commission proceeded on the assumption that it was their mission to re-distribute landed property in Bengal, in fact to reconstruct society. They laid the flattering unction to their soul that their Bill would realize paradise upon earth. That we do not exaggerate when we say this we will show by quoting their own words. They wrote: "In concluding the task which has been entrusted to us, and the difficulty of which may be fairly postulated without the appearance of magnifying our duties, we indulge no undoubting confidence that, if the Bill which we have framed becomes law, it will ensure to the rural community of these Provinces a PARADISE of agricultural peace and prosperity, undisturbed by litigation and untroubled by famine and all the accidents to which the husbandman's life is especially subject in this country." Alas for human ambition! Before the Bill is even formally introduced into the Legislative Council it has been condemned on all sides. Neither the landlords nor the tenants nor their friends and spokesmen like it. The Government has not accepted it. It has openly declared that it does not pledge itself to the Bill in its entirety. It

commissioned Mr. Reynolds to revise it. It now appears that some of the members of the Commission were at variance with each other respecting some of the most important provisions of the Bill. Thus for instance the conversion of 100 biga jotes into permanent under-tenures, we are told, was an idea of Mr. Dampier and Dr. Field, with which the other members of the Commission did not sympathize. Then three years' occupancy right was a proposal of Messrs. MacKenzie and O'Kinealy in which the other members did not concur. Again, the compensation clauses are now disowned by their own authors. The abbreviated procedure is now generally admitted to be insufficient for the purpose for which it is intended. Regarding the question of sub-letting the members were not only not unanimous, but not in a position to give a conclusive opinion. The result is that the Bill of the Commission is the child of many fathers, who have contributed to the embodiment of different parts, but who each in his turn disown the parts for which they individually are not responsible. No wonder then that a measure so circumstanced should meet with general disapproval. The result is that it is practically shelved by the Secretary of State. The Marquis of Hartington has even refused to print the Report of the Commission as a Parliamentary blue-book. In reply to a question put by Mr. Errington in the House of Commons his Lordship said " that the Commissioners' report on the Bengal Land Laws was a very lengthy document, and would be placed in the library, but an abstract would be furnished to members. It should be understood that the proposals were those of the Commissioners, and had not been accepted by the Legislative Council of Bengal." This means that the Bill of the Commission, as we have remarked above, has been practically shelved by the Secretary of State. The Bengal Government has not, however, given up the game. We believe it is still engaged in fitting out the vessel, but we hope it will steer clear of the shoals and sandbanks, which have ship-wrecked the venture of the Commission.

But the cardinal mistake we must candidly confess was committed by Government. It hastily undertook the gigantic task of revolutionizing the substantive law. As the British Indian Association in their letter to Government, which we noticed last week, justly remark : " It has been a received maxim in legislation that no change in law should be made unless there was an absolute and well-ascertained necessity for it ; such necessity should be expressed by the general sense of the people, by deeply and widely felt wants, by some administrative difficulty or by some exigencies in the social economy of the country. No such conditions, however, exist for a change in the substantive Rent Law of Bengal. Until the Government had led the way as it were by the appointment of the Rent Commission not a voice had been heard calling for a change in the law. No want or wish was expressed for such a change. Not a single instance occurred of the administrative machinery coming to a dead-lock in the absence of such change nor has the progress of social economy received any check from want of such a change. If the Government had any doubt on these points, it might have instituted a proper and organized local enquiry by taking the evidence of competent persons on the subject. Instead of appointing

a Commission to amend the Rent-Law, it might have charged it to enquire into and report on the necessity for the desired amendment of the law. In the United Kingdom, as indeed in all other civilized countries, such enquiry generally precedes legislation, but unhappily as regards this momentous land question of Bengal, which affects millions of people, and interests hundreds of millions of sterling worth, execution has preceded enquiry, a foregone conclusion has taken the place of unbiassed investigation, assumption that of logical deduction." The landholders of Bengal had asked for facilities in the realization of arrears of rent, and the Government had more than once acknowledged the justice of their demand. The original project of legislation was restricted to that object. But the Government was suddenly seized with a fever of Land-Law reform, and without condescending to enquire whether there was any real necessity for change in the substantive law, it appointed a Commission to draft a bill from the bowels of their own consciousness. But the most violent partizans of land-law reform admit that the "existing land-law of Bengal is one of the justest in the world." Mr. O'Donnell, whom we take to be the most earnest spokesman of Bengal land-law reformers, says in a letter to this journal: "As to the land question in Bengal Proper and chiefly in Eastern Bengal I am most clearly of opinion that the proprietors of land use their rights with justice and moderation, at the same time that it very frequently happens that they have the greatest difficulty in collecting rents. There are exceptions, but when a zemindar is oppressive it is the fault of the administration and not of the existing land-law, which is one of the justest in the world. If the law is moderately enforced real wrong-doing to the tenantry is impossible, and it is most happily the fact that in Bengal Proper the local officials—chiefly civilians of the competitive era—enforce our admirable law with justice and consideration for the rights of all persons having an interest in the land. It is well-known how greatly agrarian relations in Behar differ from those of Bengal. The points of difference, however, are not in any way connected with the provisions of the law, for in both provinces they are the same, but are to be found in the fact that an old-world school of officers has allowed the law to remain a dead letter in Behar till twenty years after it was passed." Again: "All the talk we hear about the great reform in Behar, that is to result from the new Land Act, is a folly of follies. What can the Behar tenant have better than fixity of tenure and fair rents assessed by the Civil Courts? That he has already as far as legislation can give it him. It is only disobedience of that law by certain high-placed officers that has prevented the Behar tenantry from being as well-to-do as I am glad to say their fellows in Bengal generally are." So much for necessity of change in the substantive law.

We repeat we deny that there is necessity for change in the substantive Rent-law of Bengal, but if the Government is determined to legislate on the subject, it ought to take the advice of the British Indian Association. The Association urge that "legislation ought to be based on the results of enquiries conducted by a Commission or any other constituted authority into the circumstances and economic condition of each district in Bengal and Behar. An enquiry of the nature mentioned

would bring into light the peculiarities of each district, the respective rights of landlords and tenants as recognised by local custom and usage in such district, the economic conditions regulating rent, and the changes if any introduced by the later laws, and would enable Government and the public to judge whether any and what changes are necessary in the existing substantive law." And this was exactly the course followed in England on the subject of land-law reform in Ireland. Mr. Gladstone in introducing the Irish Land Bill said :

Let us consider, in the first place, what is the guidance to which we might naturally look for our direction in the framing of a Bill upon Irish land. We found in existence when we came into Office a Commission which had been appointed by the former Government a Commission with extraordinary width and scope to investigate the working of the land Acts. Their report was sure to be a considerable element in the consideration of the case ; but at the same time, it would be hardly expected that we, on this side of the House, as a Government formed from this side of the House, would be content with the sole verdict of that Commission, partly because of the gravity of the case and partly because we thought it necessary that a body should be appointed which might give its undivided attention to the thorough and searching investigation of the Irish and land question. Her Majesty was advised to appoint a Commission, and we have now the results of both Commissions.

This is the most rational process—enquire before you seek to amend, but the Government here has reversed the position. We hope it will now retrace its steps.

We have no wish to further prolong the discussion, though we are free to confess that we have by no means exhausted the subject. But as we have attained the object we had in view in commencing the series, we lay down our pen for the present. We may, however, mention that a general desire having been expressed for a collection of the articles in a handy form we propose to reprint them in the shape of a pamphlet as early as practicable.

MR. O'DONNELL'S TESTIMONY ON THE BENGAL RENT-LAW.

WE ARE requested to publish the following letter from Mr. C. J. O'Donnell :

DEAR SIR,—In your recent review of the year 1880 you mention my letter to Lord Hartington on " The Ruin of an Indian Province" as one of the influences calculated to affect legislation in regard to the tenure of land in a manner unfavourable to the landlords of Bengal. I should regret if such were the case. My object was to draw attention not to any shortcomings in the law itself, but to maladministration of it in one of the three great territories that constitute the Lower Provinces of Bengal.

As to the land question in Bengal Proper and chiefly in Eastern Bengal I am most clearly of opinion that the proprietors of land use their rights with justice and moderation, at the same time that it very frequently happens that they have the greatest difficulty in collecting rents. There are exceptions, but

when a zemindar is oppressive it is the fault of the administration and not of the existing land-law, which is one of the justest in the world. If the law is moderately enforced real wrong-doing to the tenantry is impossible, and it is most happily the fact that in Bengal Proper the local officials—chiefly civilians of the competitive era—enforce our admirable law with justice and consideration for the rights of all persons having an interest in the land.

It is well-known how greatly agrarian relations in Behar differ from those of Bengal. The points of difference, however, are not in any way connected with the provisions of the law, for in both provinces they are the same, but are to be found in the fact that an old-world school of officers has allowed the law to remain a dead letter in Behar till twenty years after it was passed.

All the talk we hear about the great reform in Behar, that is to result from the new Land Act, is a folly of follies. What can the Behar tenant have better than fixity of tenure and fair rents assessed by the Civil Courts? That he has already as far as legislation can give it him. It is only disobedience of that law by certain high-placed officers that has prevented the Behar tenantry from being as well-to-do as I am glad to say their fellows in Bengal generally are.

I hope I have now corrected a misapprehension of the object of my letter to the Secretary of State, which I do not wish to leave unexplained.

In conclusion I would venture to give the zemindars of Bengal a piece of advice and that is to sedulously segregate themselves from those of Behar. The latter, in spite of their wealth and many dignities, are very bad company for honest proprietors to find themselves in. They have a Landlords' Association of their own at Patna, and it would be good policy in the landlords of Bengal to invite them to restrict their activity to it. They have been appearing a good deal too often in purely Bengali meetings. I am sure you will not suspect me of any desire to break up the Indian people into hostile factions, but the principles of a wise Home Rule and local treatment of local questions apply to Bengal as well as to Ireland.

I am, Dear Sir,
Yours faithfully,
C. J O'DONNELL.

Jessore, 10*th February*, 1881.

We thank Mr. O'Donnell for this letter. As his recent pamphlet is believed, rightly or wrongly, to have whetted the agitation against the land laws of Bengal, we hail with pleasure his admission that the "existing rent-law (of Bengal) is one of the justest in the world." And even as regards Behar he admits that the depressed condition of the Behar peasantry is not due to defects in the law, but to defects in its administration, but the Government proposes to change the law and not to improve the administration. It is, therefore, necessary that Bengal and Behar should unite and make a combined effort, lawfully and constitutionally, to resist arbitrary and violent changes in the substantive law. This combination from a national point of view is a pleasing sign of the times.